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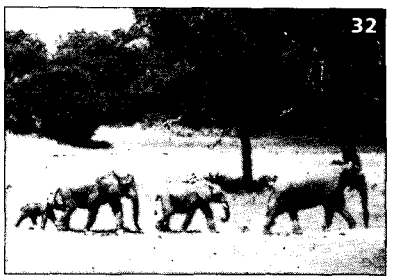

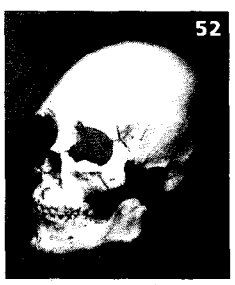

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The Nail File

The economic meaning of manicures

By Virginia I. Postrel

Remember the Great Depression of 1995? *The New York Times* consumed a zillion column inches—the most since the Pentagon Papers—chronicling economic disaster and "unrelenting angst." *The Downsizing of America*, the book version of that seven-part series, declared America a Dickensian hell, analogous to "when the peasants in England were shunted off the land and left to toil in misery in the slums." Pat Buchanan and Jeremy Rifkin shattered *Crossfire*'s left-right conventions, agreeing that technology was destroying the job hopes of everyone but a few elitist nerds. Once the presidential campaign kicked in, political reporters couldn't get enough of Buchanan's populist economic platform. They knew it would sell—until voters humiliatingly shunned it in Arizona and South Carolina.

The voters knew something reporters missed: America was a land not of misery but of economic vitality and resilience. That's easy to see now, amid low unemployment and steady, noninflationary growth. But there was no recession two years ago. Why did so many pundits and reporters go so wrong? What blinds so many smart people to what's happening all around them?

One answer is psychological bias: "The economy" is too big and complicated to comprehend, so we overemphasize "typical" jobs and industries—the ones we see on TV. If those jobs change, or those industries shrink, we mistake turbulence for doom. And even in relatively good times, we can't imagine how the economy can possibly create enough openings to absorb future workers. "Not everyone can be a computer programmer" is the rallying cry of the gloom mongers. It's a good slogan, because programming has come to symbolize the job of the future and because, in fact, not everyone can be a programmer. An economy of high-tech knowledge workers will leave a lot of people behind.

But with all due respect to Silicon Valley, one of my favorite places, that's not all there is to the U.S. economy. So I would like to add another California-based growth industry to our set of touchstones, one that captures most major trends in American economic life: nail salons.

Twenty years ago, manicurists mostly worked in obscure corners of hair salons or catered to the wealthy. Cher got her nails done; the rest of us did not. Today, free-standing nail salons dot the commercial blocks and strip malls of cities from Southern California to South Carolina. *Nails* magazine pegs the market at $6 billion in 1996 for salon services alone, up from $5.2 billion a year earlier. About 239,000 people work as "licensed nail technicians." (By way of comparison, the Business Software Alliance counts about three times as many people employed in the software industry.)

That's the industry hidden in plain sight. There's also the business you don't see as you walk down the street: the manufacturers and distributors that supply the salons. *Nailpro*, another trade magazine, lists nearly 400 manufacturers in its 1997 *Gold Book* directory. These companies make everything from polishes, nippers, and acrylic nail-sculpting compounds to manicure tables, polish racks, and toeless pedicure socks. Says *Nailpro* Executive Editor Linda Lewis, with little exaggeration, "Everything you see in that *Gold Book* was developed over the last 20 years." Nail salons aren't the biggest business in America, but they're a growth industry that sprang up without much notice.

The first lesson they teach is: *Take government statistics with a shaker of salt.* The Bureau of Labor Statistics will tell you that "manicurist" is a fast-growing profession—impressively so for a job the BLS didn't even track in 1979. It claims there are 35,000 manicurists, a number it projects will grow to 55,000 by 2005. Now this is a business that supports three trade magazines, including *Saigon Nails* in Vietnamese; *Nails* alone has a circulation of 55,000. It is also a licensed occupation in all but a few states, and the licensing boards track active nail techs, which is where that 239,000 figure comes from. The BLS head counters have misplaced an awesome number of jobs. If they can be that wrong about licensed manicurists, imagine what they can do with gardeners, car washers, or nonunion construction workers.

Second, *serendipity and synthesis drive economic development, making new industries hard to predict.* Easily used acrylic systems made stand-alone nail salons possible: Occasional manicures can't support a separate business, but acrylic nails cost more and require routine maintenance. (The appeal of acrylics is that they repair bitten nails and deter nail biting, make nails smooth and even, and hold polish better than natural nails. And for those inclined to the dragon lady look, they can also be very, very long.) Artificial nails account for two-thirds of salon revenue.

Modern acrylics were invented not by a cosmetics company but by a dentist with a knack for chemistry. Catching a familiar smell as Dr. Stuart Nordstrom made her a temporary crown, a patient griped about the similar compounds she used as a manicurist to fashion fingernails. An inventive fellow, Nordstrom fooled around in his garage lab and came up with better compounds, founding Creative Nail Design Systems in 1978. Its products and training courses, along with other innovators' improved glues and plastic nail tips, helped propel the industry's growth.

Better acrylics were necessary to build the nail business, but they were not sufficient to make it explode. That took the phenomenon veteran nail techs hate most—discount salons. The business is easy to get into: A license typically takes no more than 400 hours of schooling, and opening a shop requires just a few thousand dollars. Fierce competition was inevitable.

It came in the 1980s, as Southern Cal-

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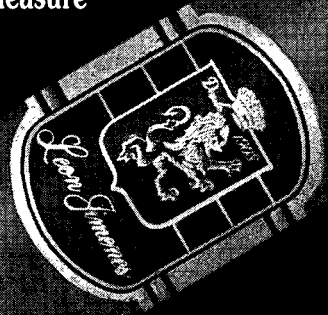

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Permissions Brandon Shamim

Volunteer Anthony Brown

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Editorial and Production Offices
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064
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Washington Office
1717 Pennsylvania Ave., NW, Suite 260
Washington, DC 20006
202-955-1324 Fax: 202-955-3187

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301-215-6710 Fax: 301-215-7704

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Founding Editors
Manuel S. Klausner, Tibor R. Machan, Robert W. Poole Jr.

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ifornia's large community of Vietnamese immigrants discovered the business. From 1984 to 1989, the number of licensed nail techs in Los Angeles County jumped from 9,755 to 15,238, about 80 percent of whom were Vietnamese-born. Over the next decade, their salons spread from California across the country. The new entries, says *Nails* Editor Cyndy Drummey, "made the prices much, much cheaper and made what used to be luxuries more-affordable luxuries....It's like the electronics industry." The discount salons developed techniques for getting the job done much more quickly, though less luxuriously and with minimal chit-chat. They treated manicures more as a product—nice nails—than as a pampering service. That tradeoff was fine for the new clientele of busy, price-conscious women. The market boomed.

In the story of nail salon competition, we can see many economic trends, both contemporary and timeless: Immigrants expand markets, rather than just taking existing jobs. Competition pushes prices down and spurs productivity-increasing innovation. It also encourages a backlash from old-timers; veteran nail techs like to insinuate, with minimal evidence, that the discount salons are unsanitary and dangerous, and they have pushed for increased licensing requirements and more-intrusive government oversight.

Nail salons also shed light on one of the biggest economic questions of the day: Where are the productivity gains going? "The productivity paradox" usually concerns information technology: Companies invest in computers, but productivity increases don't show up in their profits. Are the computers really bad investments? In a given case, maybe, but it's hard to imagine that all U.S. business is so stupid.

Nail salons suggest an answer: *Because of competition, the benefits of increased productivity are going to consumers, not producers.* By wielding an electric-powered file effectively, a discount nail tech can file, fill, and polish acrylic nails in 30 minutes, charging $13. A traditionalist filing by hand will take twice as long and charge at least twice as much. The revenue per employee per hour is about the same and may even be higher for the less-capital-intensive salon. All the gains from investing in and learning to use the power file go to the customer, who saves both time and money. That savings creates the mass market on which discount salons rely. But competition among the discounters also drives prices to the lowest sustainable level; any salon that tries to raise its fees to capture some of the productivity returns will find a shop across the street stealing all its customers. (Traditional salons can avoid this price spiral only if they distinguish theirs as a premium service, emphasizing luxury and relaxation.)

The same thing happens when companies in other competitive industries install computer systems to improve customer service. If competition means they can't charge more for the improved service, there is no gain in "productivity" as normally measured. The customer captures, in better service, the return on investment; the investing company simply keeps up with its competitors and gets to stay in business. (These untabulated increases in quality also distort measurements of inflation and, as a result, of real income. See "Priced to Move," February 1997.)

Nail salons create hundreds of thousands of fairly pleasant jobs at decent wages—including tips, the average nail tech makes around $475 for a 35-hour week—without requiring lots of education or "knowledge worker" skills. Their suppliers are innovation-driven, competing fiercely to develop better, cheaper products. They even use high-tech materials. Yet when economists, politicians, or commentators get together to spout off on the economy or the future of work, no one ever talks about nail salons—or anything else like them. This is not a random distortion. It, too, has a lot to teach about both economic trends and economic discourse.

Nail salons are girl stuff. Most of the people who work in them are women, as are almost all their customers. Though women make up 45 percent of the labor force, our political discussions do not consider feminine occupations—however pleasant, well paid, or open to minimally educated people—viable alternatives to factory work. These assumptions aren't conscious or malicious; they are simply the result of distorted mental pictures.

But even female policy wonks who get their nails done every week would never think of talking about nail salons—or the multibillion-dollar beauty industry—in

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public. Such businesses are too embarrassing to mention. This error is far more pernicious: *If we ignore all the businesses that provide beauty, entertainment, or other "nonessential," nonmaterial goods, we will miss the future of the economy.* Serious discussions of economic trends are no place for fun-hating, beauty-scorning Puritans. When Jeremy Rifkin concludes *The End of Work* by calling for punitive taxes on the booming entertainment business, he looks ridiculous. Having discovered a frivolous industry that is actually creating a lot of jobs, he demands that we crush it. He isn't interested in jobs; he's just intolerant of change. And he confuses his personal tastes with economic reality.

Human beings of all incomes and levels of technology crave beauty and diversion. But as people get richer, they can afford to spend more on such luxuries. By historical standards, Americans are very rich. It's not surprising, then, to find smart entrepreneurs creating economic value, and lots of new jobs, by catering to our happiness as well as our physical needs. To find them, however, you have to look. Try the Yellow Pages, under "manicures." ◆

Dealers' Choices

The tobacco companies have renounced the principles that made it possible to defend them.

By Jacob Sullum

"You're defending the tobacco companies!" an apoplectic cigarette-model-turned-anti-smoking-activist screamed at me. "They're merchants of death....How dare you defend them!" On occasions like these, I used to insist that I was defending the tobacco companies because important principles were at stake: freedom of speech, the rule of law, property rights, individual responsibility, the liberty to trade longevity for pleasure. But the tobacco companies freed me from the burden of defending them when they agreed to the nationwide liability settlement proposed last summer, thereby renouncing all of these principles. Now I am in the unaccustomed position of rooting for the industry's most militant opponents, hoping the deal will fall apart.

Philip Morris used to be very keen on the First Amendment, celebrating our civil liberties in TV ads, underwriting a National Archives exhibit marking the Bill of Rights bicentennial, and sponsoring a contest for the best essay on the right to advertise. The first sign that the company's enthusiasm might be waning came after the Food and Drug Administration proposed severe restrictions on tobacco advertising and promotion in August 1995. Among other things, the FDA wanted to ban premiums such as hats, tote bags, and lighters; brand-name sponsorship of sporting and cultural events; outdoor advertising within 1,000 feet of a playground or school; and the use of pictures in outdoor signs, indoor signs in locations accessible to minors, or print ads in publications read by minors. Philip Morris responded by suggesting legislation imposing a less sweeping set of restrictions on the industry. Thus the market leader, with the most to lose from a vigorous contest for smokers' business, was asking Congress to hobble its competitors.

Now Philip Morris and the country's number-two cigarette maker, R.J. Reynolds, negotiating on behalf of the industry, have offered to accept the FDA's restrictions and go even further, forsaking outdoor signs, Internet advertising, the use of cartoon characters or human figures, and product placement in movies, TV shows, or video games. Their readiness to accept such limits, which were reportedly part of the industry's opening offer, should give pause to anyone who thinks the Marlboro Man, Merit Awards, and the Kool Jazz Festival play a vital role in keeping Americans smoking. Nevertheless, tobacco's opponents do complain, loudly and incessantly, about such institutions, and they are not likely to get rid of them without the industry's cooperation. U.S. District Judge William L. Osteen, who upheld the FDA's jurisdiction over cigarettes in April, also ruled that it does not have the authority to regulate tobacco advertising and promotion. Even if it did, a Supreme Court that in recent years has subjected restrictions on commercial speech to increasingly close scrutiny is not likely to uphold a program of censorship as ambitious as this.

The advantage of the settlement proposal, from the perspective of people whose nightmares revolve around Joe Camel and Virginia Slims models, is that the tobacco companies are doing to themselves what they have long insisted the government should never be allowed to do. If legislation restricting tobacco advertising and promotion is overturned, the companies will still be bound by a consent order imposing the same restraints. Philip Morris et al. used to wave the First Amendment. Now they are waiving it.

Even leaving aside the twin threats of litigation and regulation that led to this deal, the coercive implications of the speech limits are not hard to see. What about people who are not party to the agreement? Suppose I start a tobacco company, and I want to advertise on a big billboard in Times Square. Or suppose a foreign tobacco company wants to advertise its brand to American consumers on the Internet. In a country where the established cigarette makers have agreed to forgo such indecent speech, would exceptions be tolerated?

Nor does the mischief stop with cigarettes. Inevitably, the tobacco industry's capitulation will be cited as a precedent for every other business that offends the sensibilities of the professionally

FRESH OFF THEIR VICTORY OVER BIG TOBACCO, THE STATES INDICT BEER COMPANIES TO RECOVER MILLIONS OF PUBLIC DOLLARS SPENT ON CIRRHOSIS AND DRUNK-DRIVING VICTIMS.

HENRY PAYNE

indignant: alcohol, pornography, firearms, fur, boxing, fast food—you name it. "We're infuriated at tobacco companies for enticing kids to smoke, so we don't want Joe Camel on billboards," Kelly Brownell, the psychologist who directs Yale's Center for Eating and Weight Disorders, recently told the *New Haven Register*. "Is it any different to have Ronald McDonald asking kids to eat foods that are bad for them?" Thanks to the tobacco industry's surrender, politicians will be pondering such questions soon enough.

Conceding FDA authority over cigarettes may also have ramifications for other industries. In February 1994, when FDA Commissioner David Kessler first suggested that the agency had jurisdiction to regulate cigarettes, he was contradicting every one of his predecessors, along with tobacco's opponents in Congress, who had repeatedly introduced legislation to give the FDA the authority he claimed it already had. Kessler reinterpreted a definition of *drug* in the Food, Drug, and Cosmetic Act: "articles (other than food) intended to affect the structure or any function of the body of man or other animals." Taken literally, this definition encompasses many items that are not ordinarily considered drugs, including bullets, pepper spray, and pornography. Indeed, as the U.S. Court of Appeals for the District of Columbia Circuit noted in 1980, "Anything which stimulates any of the senses may be said...to affect the functions of the body of man." Recognizing that Congress could not have intended the law to sweep so broadly, the FDA had always taken the position that it would not regulate cigarettes as drugs unless a manufacturer made explicit health claims. Federal courts upheld this interpretation of the law.

Citing "mounting evidence" that was neither new nor relevant, Kessler reversed that policy, classifying cigarettes as "drug delivery systems," a kind of medical device. Last April, in response to an industry lawsuit, Judge Osteen noted that "FDA officials testified before congressional committees on numerous occasions that the agency lacked jurisdiction to regulate tobacco products" and that "members of Congress agreed with FDA's assertions that it lacked jurisdiction." Still, he said, because Congress had defined both *drug* and *device* broadly and had never explicitly forbidden the FDA to regulate tobacco products, the agency's new reading of the law was reasonable.

If so, the FDA apparently has carte blanche to regulate as drugs or devices a wide range of products that members of Congress never imagined would be so classified, and the FDA's current interpretation of the law is no guide to how it may act in the future. This understanding of the agency's authority replaces the rule of law with the whim of the FDA commissioner. Legal experts think there's a good chance Osteen's decision would be overturned had the industry pursued an appeal, but the tobacco companies promised to abandon their challenge as part of the settlement proposal. The deal recommends a separate category of medical devices especially for tobacco products—an implicit acknowledgment that cigarettes do not fit into the current regulatory framework.

The tobacco companies also signed away the rights of business owners by endorsing federal legislation restricting smoking on private property. The deal calls for a watered-down version of the Smoke-Free Environment Act introduced by Rep. Henry Waxman (D-Calif.), which bans smoking in any building regularly entered by 10 or more people at least one day a week. The tobacco companies used to argue that business people should be allowed to establish rules for smoking on their own property, without interference from city council members or state legislators. Now they are inviting congressional interference, albeit with exemptions for certain businesses.

The money promised by the tobacco companies speaks even more loudly than the regulations they accepted. By agreeing to settle the state lawsuits demanding compensation for the cost of treating smoking-related illness under Medicaid, they seemed to endorse the notion that, having forced taxpayers to fund other people's health care, politicians may then extort money from manufacturers of products associated with disease or injury. This premise suggests a long list of potential defendants. A state might sue makers of alcoholic beverages, which can cause cir-

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rhosis of the liver; dairy products, which contribute to heart disease; candy, which fosters tooth decay and obesity; and such instruments of injury as guns, cars, skis, skateboards, and bathtubs.

Blaming manufacturers lets consumers off the hook. The rejection of individual responsibility is even clearer in the industry's agreement to settle claims by smokers and their families. Until recently, tobacco companies had always insisted, and juries had always recognized, that cigarettes do not smoke themselves. This simple reality is the main reason no tobacco company ever had to pay a cent to a smoker in more than four decades of litigation.

Denying responsibility is a prelude to denying freedom. If smokers are helpless victims, tricked into nicotine slavery by a conspiracy of deception, it is presumably the government's duty to free them. They can be free only if they stop smoking, and many of them will not stop smoking on their own. So they must be scolded, prodded, fined, restricted, and ostracized. If they complain, saying that smoking is their choice and the government has no business interfering, it's because they are suffering from a slave mentality, a sort of false consciousness. And that, too, can be remedied. The tobacco companies have taken the first step. ◆

Swap Meat

Friends and critics miss the point on NAFTA.

By Brian Doherty

In early July, the Clinton administration issued its first, mostly positive, official assessment of NAFTA's impact. In a sign of the lines along which the Democratic Party is apt to split in a Gore/Gephardt dust-up in 2000, House Minority Leader Richard Gephardt (Mo.) insisted to *The New York Times* that NAFTA "hasn't measured up" and that "[b]efore we proceed with further trade negotiations we need to ensure that trade results in real progress for the broadest cross section of people."

This debate is more than just another internecine Democratic Party fight. Success for Gephardt's brand of frightened "there is power in a union" paleoliberalism would have implications for the world's economic future that go beyond the humble realities of NAFTA's actual impact so far. NAFTA hasn't even been around for four whole years yet. The U.S. economy is influenced by forces and decisions more important than the modest tariff reductions (and concomitant bureaucratic complications) that define NAFTA.

The original NAFTA debate rang noisily with both despairing cries and overconfident brags about jobs. So of course the Clinton administration's assessment featured the usual imprecise macroeconomic guesses. The official White House line is that 90,000 to 160,000 new jobs have been created as a result of NAFTA, while maybe 32,000 to 100,000 have been lost. The net, then, is anywhere from –10,000 to 128,000. Whatever you say, Mr. President. The Labor Department program set up to help those who allegedly lost their jobs because of NAFTA counts 125,000 eligible people. But these include many whose plight's connection with NAFTA is tenuous to nonexistent, as *The Wall Street Journal* showed in an excellent front-page story on June 30.

The fact is, no one really knows what NAFTA's impact on jobs has been. NAFTA's friends and foes both focus their gaze in the wrong place. Many of the alleged horrors that NAFTA naysayers predicted have sure enough come to pass. NAFTA has not directly led to an unprecedented flood of export-related jobs. The U.S. trade deficit with Mexico has grown to $16 billion, despite 36 percent export growth, because imports from Mexico increased almost twice as much.

Such is international trade. Those overarching macro numbers hide more than they reveal, however. They hide the thousands of individual decisions to buy and sell that, when added together, make up trade deficit figures. It's easy to scare Americans with talk of ballooning trade deficits. It's harder to upset them by complaining that they are now able to buy cheaper tomatoes and cars (which, even if assembled in Mexico, usually consist of American-made parts). Those macro numbers also disguise what a tiny effect any trade with Mexico has on the American economy: Total merchandise trade with Mexico adds up to just 0.8 percent of the U.S. gross domestic product.

But that tiny effect masks what is really important about the principle of freer international trade. Such trade encourages liberalization; it's harder to attract foreign capital with confiscatory taxation or nationalization hanging over investors' heads. And rules-based deals like NAFTA help discourage governments from violating free trade principles whenever native special interests howl. Counting jobs gained or lost in the short term isn't what the spirit of free trade deals should be about. What's important is the long-term freedom for people (and their money and property) to find where they can best add to everyone's wealth. And that spirit can't have its best results without spreading. Some of the increase in trade with Mexico and Canada apparently has been redirected from elsewhere. The distorting effects of limited trade pacts fade as such deals spread.

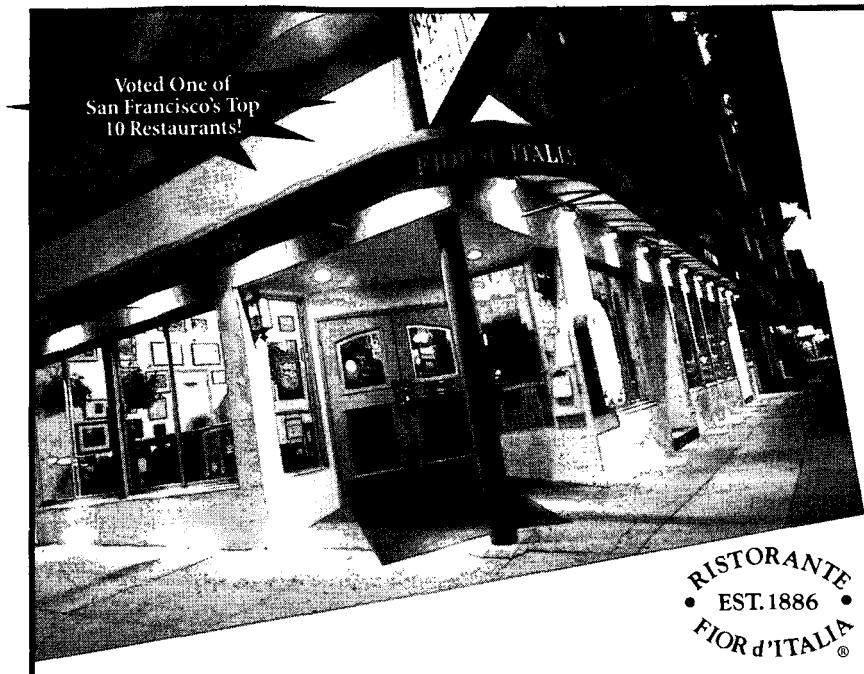
What also can be expected to fade is the Mexican misery that made some critics scoff about the possibilities of NAFTA, as in Ross Perot's insulting comments about trading with a nation of people living in boxes. Much post–NAFTA commentary has made hay of the unpleasant (to American sensibilities) conditions in which many Mexicans work and live. Mexico has *maquiladoras* with horrible pollution, shantytowns with appalling levels of violent crime, wages that most Americans wouldn't even sniff at. In a December 1996 article on grim conditions in the Mexican border town of Juarez, *Harper's Magazine* claimed Juarez's troubles were "the violent realities of free trade"—as if crime and poverty first struck Mexico like plagues from the north in 1994 when NAFTA went into effect. To utopian critics, such shocking details show both why NAFTA is a failure and why it shouldn't even have been attempted: No fair and honorable trade is possible between rich and poor.

Of course, in trade each side must have something the other wants, and in some cases lower wages are one of those things. (Then again, low wages are not the be-all and end-all for industry—we don't see capital and equipment rushing en masse to Zaire.) Those who weep over Mexican suffering can't blame NAFTA for preventing a utopia of universal wealth, and they can't maintain that cutting poor countries off from world capital and trade would do them any good. Poverty and its handmaidens cannot be an excuse for avoiding the changes that have created what wealth the world does enjoy: the extension of industrialization and the division of labor in a legal environment that mostly respects private property and mutually agreed-upon trade.

As President Clinton tries to get fast-track authority for extending NAFTA–like deals across Latin America, it is probably too much to hope that he can resist the temptation to make irrelevant promises of outrageous good fortune for America's working people. Freer trade benefits the great majority in the long run, in addition to satisfying simple principles of justice. The United States could reap many of the benefits of free trade unilaterally if it wished. But pacts make free trade more politically palatable and help lock in commitments that might fade when freer trade doesn't instantly generate impressive macroeconomic stats to bash Gephardt with in 2000, or even creates specific problems for specific people. But to choke free trade condemns the world to stagnation. In the long run it did, and will continue to, create a world of unprecedented wealth.

Reason News

- Creators Syndicate will begin carrying a weekly newspaper column by Senior Editor Jacob Sullum in October. Fans of his work should alert their local newspapers and encourage them to pick up the column.
- Want a more reasonable view on such topics in the headlines as the tobacco deal, campaign reform, or stadium boondoggles? Check out "Breaking Issues", the newest feature of *Reason Online* (www.reasonmag.com), which contains stories from REASON authors and links to related sites.



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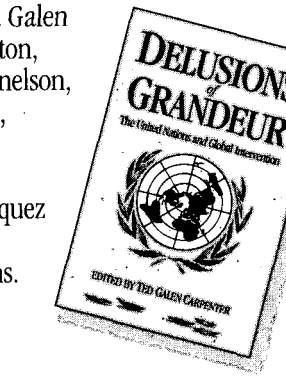

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Kids Stuff

Nick Gillespie's "Child-Proofing the World" (June) is a refreshing antidote to doomsayers who exaggerate the perils of childhood in the '90s and posit bigger government as the solution. But his discussion of divorce needs clarification.

It is true that, for the majority of children, most of the problems measured by researchers abate within two years after divorce. But the risk of long-term negative outcomes for kids after divorce is still twice that of children whose parents do not divorce. For medical problems, a factor that doubles a hazard is noteworthy even when a majority escapes the problem. For example, dietary cholesterol is thought to increase the risk of heart disease less than twofold, yet millions adjust their diets accordingly.

More significant, according to the best evidence, two out of three children from divorced homes suffer chronically poor relationships with their fathers that do not improve with time. Such alienation is cause for concern, particularly given the well-established finding that a good father-child relationship contributes substantially to children's moral, intellectual, and social development. Father absence is a greater predictor of crime than poverty.

The good news is that divorced parents can do a lot to improve their children's chances, particularly if the government will remove some roadblocks. In fact, REASON interviewee Eloise Anderson ("Hints from Eloise," June) touched on a solution. In discussing family law's bias against men, she said, "We have to rethink custody." I agree. A blueprint for such revision can be found in my book, *The Custody Revolution* (Simon & Schuster, 1992). Two proposals would help: 1) Privatize the resolution of divorce disputes through mediation. 2) Replace conventional sole mother custody with a presumption of joint custody. This would institutionalize the expectation that both parents maintain responsibility for their children. And it would safeguard children's birthright to two parents.

Richard A. Warshak
Clinical Professor of Psychology
University of Texas
Southwestern Medical Center
Dallas, TX

I found "Child-Proofing the World" very informative, and I pretty much agree with it. I'm a baby boomer and, as you noted, the world I grew up in was different from the one my boys inhabit. I think I've done a fairly good job of resisting the child-proofing extremes so dominant today.

However, simply because the world is so much meaner than the one I grew up in, I cannot avoid child overprotection. Perhaps that even becomes indistinguishable from child-proofing at times.

But when I was a kid I could run all over town all day with my friends. My parents didn't really know where I was at times, but it wasn't so bad because all the other parents around had unspoken permission to exercise authority over me. I would not even think of letting my boys run around here the same way I did in the '60s—the societal stability that allowed that is gone.

Bruce Newman
76223.1643@compuserve.com

Nick Gillespie replies: I thank Richard A. Warshak and Bruce Newman for their compliments. While Prof. Warshak is right to note increased risks for problems among children of divorced parents, I'm not convinced that such risks are analogous to medical risks. I should also note that it is not settled that father absence is a greater predictor of crime than social class; many criminologists maintain otherwise, or suggest a very complicated relationship between the two. And, while I find the summary of his book intriguing, I'm not sure that a presumption of joint custody would necessarily help children in divorce situations. A wide body of literature suggests that familial stress levels are the real cause of heightened risks of adjustment problems in children, regardless of parental status. (For a related discussion, see "Family Ways," p. 63.)

I sympathize with Bruce Newman's concerns. But whether the world is meaner than it used to be depends on a range of factors, including economic class and geography. My world growing up in suburbia in the '60s, '70s, and '80s was infinitely kinder to children than the impoverished urban areas in which my parents came of age; my son's world got much safer when his parents moved from a big city to a small town.

Sensitivity Training

I am writing to correct misstatements and misimpressions presented by your interview with John Stossel ("Risky Journalism," April). The individuals sent to me by ABC, Julie and Deborah Stone, were described as having received a brief exam when in fact they received a head-to-toe physical exam, which included a complete neurologic exam and a mental status exam. This is far more comprehensive than would be done for an individual on an annual physical. The interview neglects to mention that Julie first raised the question with me of whether she could get pregnant. Because serious endocrine disruption occurs in the majority of persons with chronic illness following chemical exposure according to test results on my patients, I recommended that she undergo further testing. I also told her that

the only pregnancy that had occurred in my hundreds of patients with chemical sensitivity and chronic illness was in a very mildly ill high school student who became so seriously ill by the 10th week of pregnancy that the pregnancy was terminated by her Catholic obstetrician to save her life. The article mentions the charge for the service, but neglects to say that we spent four hours with each of these individuals.

The article states that Julie and Debbie answered the questions honestly. They have represented themselves to the public as being reasonably healthy. However, one of these supposedly healthy individuals, on her questionnaire, described constant mild to moderate pain in the neck, shoulders, back, arms, and stomach, saying that fumes made her nauseated and that perfumes gave her headaches and that she had "a lot" of problems driving a car in heavy traffic. She also said that several times a month she experienced weakness, headaches, muscle twitching, memory problems, dizziness, nasal, throat, and chest discomfort, hoarseness, and reduced bladder control. She states that she frequently had fatigue, that she often forgets what happens after a few minutes, and she often has fatigue so severe that she goes "into a coma on the weekends." She states she last felt well in the mid-1980s. She also states that she felt mildly to moderately sick when exposed to passive smoke, vehicle exhaust, pesticides, fresh paint, perfume, and natural gas. She described mild sickness with exposure to air fresheners, using self-serve at the gas pump, and reading a fresh newspaper. Is this the description of a healthy person?

The other supposedly healthy individual stated that she had daily headaches and pain for three months or longer in the knees, back, and neck. She also described chronic fatigue and said that several times a month or more she experienced dizziness, muscle twitching, visual changes, ringing in the ears, nasal congestion, hoarseness, chest discomfort, chest tightness, and abdominal discomfort. She said she often had sleep problems and was often easily tired. She described moderate sickness symptoms when exposed to passive smoke, vehicle exhaust, road tar, fresh paint, and perfume. She described mild sickness with exposure to air fresheners, self-serve gasoline, and fresh newsprint. She also describes having headache and/or nausea when exposed to car exhaust, drying paint, and perfumes, saying that she was much more sensitive to smells than she had been before. Is this a true statement of a healthy person?

Your article also does not address ABC's own conflicts of interest with regard to chemical sensitivity and chemically related illness. You neglect to mention that *20/20*'s executive producer, Victor Neufeld, is married to a P.R. person for the chemical and nuclear industries.

You minimize the importance of reducing exposures for individuals who are affected with chemical sensitivities, even though two surveys have now documented that reducing exposure is extremely important in reducing chronic illness in individuals with chemical sensitivity. You also do not mention that six other random surveys of U.S. adults, including urban and rural, young and elderly individuals, indicate that the prevalence of chemical sensitivity in the U.S. population appears to be about 15 percent, and the California survey indicates that 7 percent have been diagnosed as having MCS by a physician. I enclose a copy of my résumé listing many of my publications in peer-reviewed medical journals and my consulting for numerous governmental agencies, none of which was even mentioned by Mr. Stossel. Indeed, his MCS "expert," Dr. Gots, has never treated a chemically sensitive patient in his life and has not been a treating physician for any patient for the past 20 years, making him poorly qualified to comment upon any issues regarding the clinical management of chemically sensitive or other patients.

Grace Ziem, M.D.
Baltimore, MD

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Jacob Sullum replies: Dr. Ziem's lengthy letter was apparently provoked by the two opening paragraphs of the introduction to my interview with John Stossel. Despite her verbiage, the closest she gets to citing a "misstatement" is her implication that Julie and Deborah Stone did not respond truthfully to her questionnaire. Although their "symptoms" seem impressive when strung together, they are quite ordinary upon closer examination. I know many basically healthy people who would have given similar answers.

The Stones were given 300 questions about real and hypothetical situations to answer, and they were told to classify as a "minor health problem" anything they would rather not experience, such as sitting next to smokers or being stuck in a freshly painted room. But when asked, "Does your current health significantly reduce your ability to do your job, housework, errands, chores, and/or other needed activities?", they both said no.

Whether their answers signify something that should be called "multiple chemical sensitivity" is the issue. Readers interested in learning more about the MCS controversy should see Michael Fumento's "Sick of it All" (June 1996). It's available online at www.reasonmag.com/9606/Fe.FUMENTO.html.

Airbags Aweigh Again

From reading John Merline's and Sam Kazman's letters criticizing my writing on airbags (June), you'd have not the slightest idea what I wrote, nor that I am by no means an airbag defender per se. What I have tried to do is bring a little sanity to the issue—with limited success. Merline writes that, "Under current government rules, many car owners are forced to pay extra for no benefit whatever. That's a point almost everyone, including [REASON Assistant Editor] Brian Doherty and Michael Fumento, has missed."

I didn't miss it; I just didn't address it. I have written all of two columns on the subject, both concentrating on the hysteria that the popular media have stirred up. But were I to address it, I would point out that we constantly pay for regulations that don't benefit us individually but that (according to the regulators, at least) benefit some portion of the population. For example, any regulation I pay for that benefits only children doesn't apply to me since I am not one and do not have any.

Kazman writes, "Airbags are designed to satisfy not consumer demand but an across-the-board federal rule." Again, what's new? How often do we explicitly demand regulations? Instead, we usually speak in more general terms such as, "Make driving safer."

But pointing out silly arguments doesn't make me an airbag supporter. I have written that I was never in favor of making airbags mandatory, and that indeed I was in an accident in which my life was saved not by my airbag—which deployed after the vehicle stopped—but by my seat belt. What I deplored in my columns was the media hysteria that both Merline and Kazman celebrate. "Kudos to the reporters who explained [sic] these risks," wrote Merline, while Kazman went even further to say that "media hype...over airbags [is] to be applauded, not derided."

Really? Do we benefit from columnists who claim that a deploying airbag is the equivalent of slamming into a brick wall at 200 mph? Do we benefit from incessant *USA Today* coverage that leaves parents thinking that children are more likely to be crushed or decapitated by airbags than to contract chicken pox, with inch-high headlines like "Deadly Air Bags" and "Deadly Force: Air Bags are Claiming the Lives of Children"? Does that really contribute to intelligent public debate, or does it simply sell newspapers and incidentally aid knee-jerk anti-regulationists? Sorry, but media hype is never to be applauded. Never. And the only time one's knee should jerk is when it's hit below the patella with a rubber mallet.

Michael Fumento
Resident Fellow
American Enterprise Institute
Washington, DC

Brian Doherty replies: Michael Fumento's defense of his position on airbags allows me to correct and clarify a figure, given me by National Highway Traffic Safety Administration spokesman Timothy Hurd, that I cited in my response to Merline's and Kazman's letters (June). In his letter, Kazman had written that "for front-seat occupants aged 10 and under, the airbag raises the risk of death by up to 120 percent." I checked this with Hurd, who told me—mistakenly—that the increased risk was 22 percent, which I expressed as "around 20 percent."

Hurd was basing his figure not on the risk to kids under 10 but on the risk to those under 12, which is a significant difference; the risk to youngsters falls dramatically with each year they age. According to Table 2-14 of the NHTSA report "Fatality Reduction by Air Bags," the reduction in risk for kids under 12 is 28 percent (not the 22 percent Hurd stated).

Kazman's figure is derived from an analysis based on Table 2-12 of the same report, which the report itself says is problematic because "the 'control group' data set of child passengers in cars with driver air bags is itself rather small, and... may be contributing to the sampling error." The report recommends instead relying on Table 2-14, which unfortunately does not break down the data by age as thoroughly as Table 2-12. That 120 percent figure is the clearest conclusion the NHTSA report can come to about the 1–10 age group, even though the report itself says that figure isn't the most reliable.

The whole scary statistics game can be a dead end. We do know that airbags have killed children. The government ought not force that risk—whatever its (still uncertain) magnitude—on parents who don't wish to bear it, or who don't want to be required to keep their youngsters out of the front seat.

Corrections

- In "The Incredible Shrinking State" (May), the first name of former New Zealand Prime Minister Muldoon was misstated. It is Robert. The first name of Labour M.P. Rodger was also misstated. It is Stan.
- In "Mises Papers Recovered" (Citings, May), the location of Ludwig von Mises's American papers was misstated. They are at Grove City College in Pennsylvania.
- In "Edifice Complex" (August/September), Cleveland Municipal Stadium was incorrectly identified as Cleveland Memorial Stadium.

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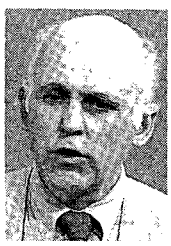

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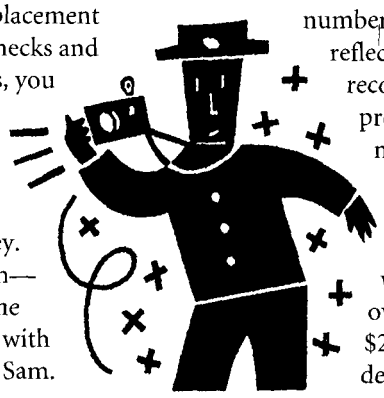
Don't Leave Home

By James Plummer

You're on vacation overseas. You reach to settle the dinner check, and then you realize: Your wallet's gone. Your credit cards are missing. You've been robbed. What will you do? While you wait for replacement traveler's checks and credit cards, you ask Aunt Sally back home to wire you some money. No problem—as long as she first checks with your Uncle Sam.



As the drug war moves into the Information Age, the Clinton administration has proposed new regulations for wiring money overseas. Called "another nail in the coffin of financial privacy" by *Financial Privacy Report* Publisher Mike Ketcher, the new rules would force anyone sending more than $750 abroad to provide identification to the financial institution wiring the money and have the transaction reported to the Treasury Department.

Current regulations require that all cash transfers of more than $3,000 be recorded by the wiring service and that all wires over $10,000 be reported to the government. The Treasury Department reports an increase in the number of transfers below the current reporting thresholds from the United States to Colombia, attributing it to drug dealers sending money to their higher-ups in South America.

Yet law-abiding people who wire money in amounts below the reporting threshold may be under the watchful eyes of law enforcement. In Texas, where businesses must report financial transactions of more than $1,000, the *Federal Register* notes that "surveillance" has been used to track the difference between the "number of people observed patronizing" a money-transfer business and "the number of customers reflected in business records." Treasury predicts that merely filling out additional paperwork will cost those who wire money overseas an extra $2.4 million. The department is expected to hand down the new Bank Secrecy Act regulations by the end of the summer.

No Deal

By Michael W. Lynch

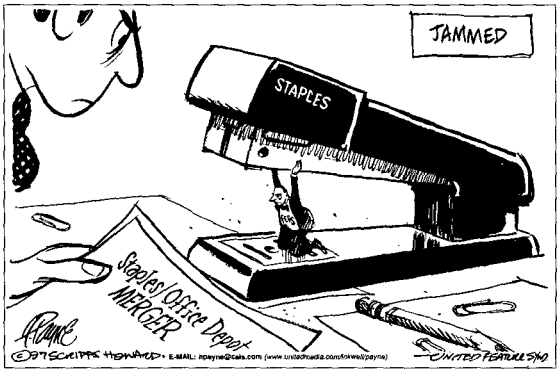
You won't be seeing Office Staples Superstores any time soon. After U.S. District Judge Thomas H. Hogan delayed the proposed merger between Staples and Office Depot so the Federal Trade Commission could rule on the deal, the two office supply retailers abandoned their plans to merge. (See "Pricing Pencils," August/September.)

Hogan said the merger would "eliminate significant future competition" and allow the new office supply behemoth to "maintain prices at an anti-competitive level."

The decision hinged on whether the two superstores compete only with other office supply superstores or with the broader market of office supply vendors. The FTC convinced Hogan that the two "category killers" compete primarily against their own kind and that new firms are unlikely to enter this market.

"No one entering Staples or Office Depot would mistakenly think he or she was in Best Buy or CompUSA," wrote Hogan, after admitting that he couldn't explain all the ways in which the superstores were unique. "You certainly know an office superstore when you see one."

After acknowledging that "the defendants are being punished for



Balance Sheet

By Rick Henderson

ASSETS

△ **Net Gains.** Federal judges say states can't regulate speech in cyberspace. Judge Marvin Shoob strikes down a Georgia law prohibiting anonymous communications over the Internet. And Judge Loretta A. Preska overturns a New York law that barred sending "indecent" e-mail to minors.

△ **Class Dismissed.** Teachers' unions start losing their aura of invincibility. Oregon enacts a bill ending tenure for public elementary and high school educators. Instead of virtual lifetime employment, the state's teachers will receive renewable two-year contracts; principals and other administrators get renewable three-year terms. And reports from the National Education Association's annual meeting in Atlanta suggest that union officials might back away from tenure if teachers get more say over curricula, books, and budgets.

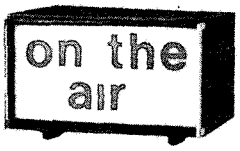
△ **Bumper Crop.** Last year Congress phased out most crop subsidies. Next year look for a serious assault on farm price supports. Reps. Charles Schumer (D-N.Y.) and Dan Miller (R-Fla.) will back bills to end the sugar, peanut, and tobacco programs. Reformers also hope to abolish the Market Access Program, which gives American food makers tax dollars to advertise overseas.

△ **Happy Hour.** All hail gridlock: A deadlocked Federal Communications Commission fails to authorize a formal investigation into the effects of TV liquor advertising on children. Speaking for the White House, FCC Chairman Reed Hundt asks, "How can anyone justify curtailing this legitimate inquiry?" Commissioners James Quello and Rachelle Chong say they're plenty justified, arguing that the FCC can't regulate the content of programming or ads.

▼ **Base Closing.** Republican presidential contender Steve Forbes thumbs his nose at the "fiscally conservative, socially tolerant" voters who led him to victory in last year's Arizona primary. Americans for Hope, Growth & Opportunity, the advocacy group started by Forbes, runs radio ads opposing a medical marijuana ballot initiative in Washington, D.C. In an AHGO press release, Forbes says those who support the compassionate use of marijuana are guilty of "moral callousness."

▼ **Plant Closing.** Want to deny good jobs to African Americans in the rural South? Claim "environmental racism." Run ads in major newspapers and magazines featuring Mel Gibson and a tie-in to his new movie *Conspiracy Theory*. That's how the EarthJustice Legal Defense Fund attacked the proposed nuclear waste disposal facility in Claiborne Parish, Louisiana. (See "Environmental Injustice," August/September.) As the ads ran, two investors, Graystone Corp. and Northern States Power Co., pulled out of the project.

▼ **Guts Check.** Returning this fall: the minimum wage. *The Wall Street Journal* reports Sen. Ted Kennedy (D-Mass.) and House Minority Whip David Bonior (D-Mich.) will introduce a bill increasing the minimum wage to $7.25 per hour by 2002. Will congressional Republicans get rolled again?



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▼ **Channel Blocks.** KidCare isn't the only new multibillion-dollar entitlement. The FCC and Congress give every current holder of a broadcast license not one but as many as *six* free channels for digital telecasts.

LIABILITIES

their own successes and for the benefits they have brought to consumers," Hogan emphasized that his ruling was specific to this case and should not be seen as setting a precedent against superstore mergers. Still, FTC watchers predict it will have a dampening effect on future deals.

"This basically means that if you're out there advertised as a category killer in a particular industry, you can't go out and buy another superstore in the same field," Tom Burnett of *Merger Insight* told *The Washington Post*. "CompUSA isn't going to be buying Radio Shack any time soon, for instance."

Driving Adolescents Crazy

By James Plummer

The much-ballyhooed soccer moms may have even less time to deal with getting to work, buying groceries, and picking up their kids before the day care center closes. A bill cruising toward passage in California would cut off one source of relief for many stressed-out parents: unrestricted driving privileges for their 16- and 17-year-old children.

Before getting a license, drivers younger than 18 would have to hold a learner's permit for six months and have a parent certify that the teens had completed 50 hours of "supervised driving practice" with an adult. After minors get their licenses, they won't be allowed to carry any passengers younger than 20 for six months—unless an adult over 25 is in the car. (No longer could older children ferry their younger siblings to the mall or basketball practice.) And for the first year after they get their licenses, 16- and 17-year-olds will be barred from driving between midnight and 5 a.m. without an adult present. Breaking the law could result in community service. The law includes exemptions for school activities, work, and family and medical emergencies.

The bill is a part of a growing trend to restrict teen driving. The restrictions on passengers would make the California bill the nation's toughest on teens, but eight states have nighttime driving restrictions and 44 states have lower rates of acceptable blood alcohol concentrations for drivers under 21, says the Insurance Institute for Highway Safety. Another bill, introduced in the California Assembly, would bar licenses for students who miss 15 days of school.

Advocates of the new laws stress the dangers young drivers face. IIHS statistics show that teenage drivers, who represent 10 percent of the population, account for 14 percent of highway deaths.

But older people are death risks as well: Thirteen percent of the population is 65 years or older, and that group accounts for 17 percent of highway fatalities. So why aren't legislators trying to limit retirees' driving privileges? Grandma can vote. Junior can't.

QUOTE

"The very thing that makes [Bill Clinton] so popular is that nobody's listening to what he's saying."
—Brookings Institution presidential scholar Stephen Hess

SOURCES

"Today, nearly one-quarter of all California children in public schools—over 1,300,000—are classified as not proficient in English. Yet under the current system, centered on bilingual education, only about 5% of [English-speaking immigrant] children each year are found to have gained proficiency in English. Thus, our state's current system of language instruction has an annual failure rate of 95%."
—From the Web site of English for the Children (www.OneNation.org), the ballot campaign led by Silicon Valley entrepreneur Ron K. Unz to end bilingual education in California. The site contains the language of the initiative, news and opinion articles about the campaign, and personal stories of immigrant parents who want their children to be taught English in public schools. The campaign's address is 212 E. 6th St., Los Angeles, CA 90014.

Want to find out how much you're being ripped off by Social Security? Two on-line sources offer information that will quickly raise your blood pressure. Social Security "calculators" offered by Americans for Tax Reform (**www.townhall.com/atr/calculator**) and the Cato Institute (**www.socialsecurity.org/calculator.html**) let you enter your date of birth, estimated income, and number of years in the work force to get an idea how much Social Security's anticipated payout pales in comparison to such forms of private savings as annuities or mutual funds.

What's On The Minds of America's Leading Conservatives?

Popular conservative authors pictured above are (*left to right*) G. Gordon Liddy, Antonin Scalia, David Horowitz, Robert H. Bork, Andrew Ferguson, R. Emmett Tyrrell, Jr., Thomas Sowell.

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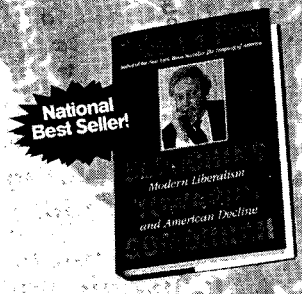

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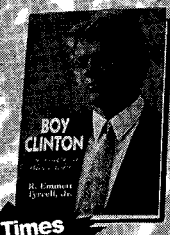

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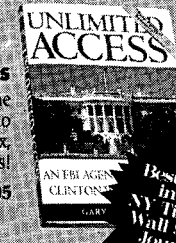

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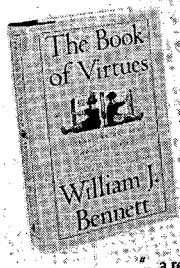

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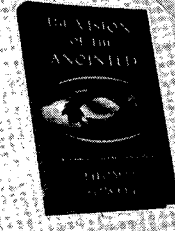

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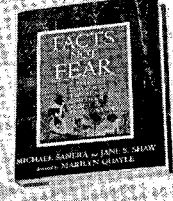

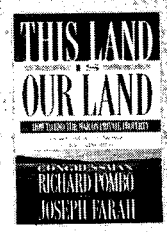

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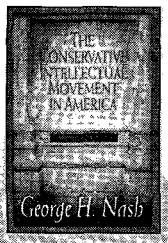

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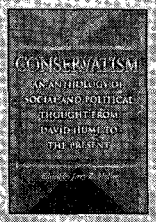

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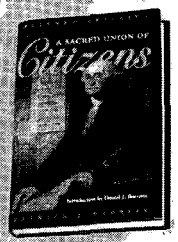

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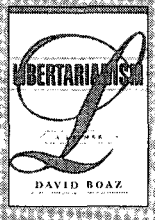

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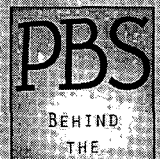

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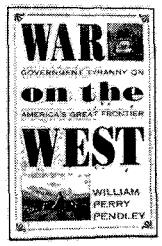

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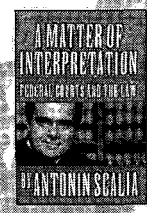

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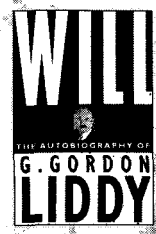

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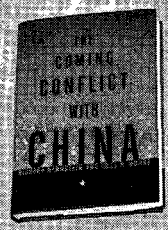

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BRICKBATS

◆In the California senate, Mike Thompson continues a battle to force private property owners to allow public access to parts of the Sacramento River bank. Homeowners who will be affected say Thompson has been pursuing a personal vendetta against them for four years. It began when Thompson and another senator were walking along the river and were confronted by a homeowner who warned them to stop trespassing on private property. Thompson has just a short time left to pursue his goal—he's running for Congress next year.

◆Jerrick Michael Snell had been sentenced to 20 years in prison for cocaine possession and was awaiting transfer in a Dothan, Alabama, jail cell. The judge who sentenced Snell, Lawson Little, walked past his cell. Snell suggested that Little perform oral sex on him. The judge apparently didn't want to fulfill this request, as he had Snell gagged with duct tape and dragged back to his courtroom. There, Judge Little changed Snell's sentence to life in prison.

◆Norman Mayo is suing Safeway and the Dairy Farmers of Washington. Mayo, a Washington state resident, claims that a lifetime of drinking milk contributed to his clogged arteries and the minor stroke he suffered three years ago. Among other things, Mayo wants a warning label on milk. "It's my opinion that the dairy industry's to blame," he said. "They push their dairy products without warning you of the hazards."

▶

Scott Stantis

All's Fair in Welfare?

By Brian Doherty

Both the White House and Congress made noise about cutting back "corporate welfare" in 1995. But neither has delivered much, says a new study from the Cato Institute.

The study identifies dozens of giveaways to corporate interests. Such spending adds up to $65 billion a year, most of it concentrated in agriculture, exports, high tech, and energy. It includes such items as helping car companies develop new vehicles, selling federally produced electricity at below-market rates to ski resorts, and paying food corporations subsidies for foreign advertising.

The study focuses on 55 specific programs, which cost $37.7 billion in fiscal 1996. The 1997 budget increases spending on those programs by half a billion, after some cuts from 1995 to 1996, for total two-year cuts of only 13 percent. The study is available at http://www.cato.org/pubs/briefs/bp_028es. html.

Edifice Wreck

By James Plummer

The San Diego City Council isn't very happy with Richard Rider.

His meddling has made the council stop its $200 million expansion of the city's convention center. The council had already started appropriating money to prepare for construction when the California Supreme Court stepped in. Rider, the 1994 Libertarian Party candidate for governor, had noticed that the council forgot to ask the voters, as required by law, what they thought about this whole thing. The court said he may have a point.

The city charter and Proposition 13 require that all bond issues be put to a vote. But the San Diego government thought it could get around that requirement by creating a paper entity, the San Diego Convention Center Expansion Finance Authority, to issue the bonds and expand the center. The city would then lease the facility from its own authority. This popular trick of local governments in California is known as "lease revenue." Carl Fabian, lead counsel for Rider and his fellow plaintiffs, calls lease revenue "the phoniest thing you can imagine....They're just transferring money from one pocket to another."

The Supreme Court may agree. After local politicians and journalists repeatedly dismissed the suit as frivolous, and some public officials even threatened countersuit for lack of probable cause, the court agreed to hear the case. *Rider v. San Diego* goes to trial this fall.

San Diego will argue that the 1947 law authorizing these paper agencies (passed to build a parking lot for the National Football League's Rams when they moved from Cleveland to Los Angeles) doesn't require that bonds they issue be put to a vote. Rider and his allies say the bogus corporations must be held to the same legal restrictions as their parent bodies. A decision is not expected before early next year.

ARTIFACT

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Presidential Screen Test

Although Bill Clinton drew lukewarm notices at the ballot box—he snuck into office with 43 percent of the vote in 1992 and netted 49 percent in '96—he has ushered in an era of movies featuring presidents. Interestingly, the portrayals have been all over the map: genial, kind-hearted impostor (*Dave*); sympathetic, romantic widower (*The American President*); reluctant, hardened-under-pressure hero (*Independence Day*); pompous, delusional incompetent (*Mars Attacks*); distracted, workaholic father (*First Kid*); horny, murderous hypocrite (*Absolute Power*); and, most recently, hunky, ass-kicking defender of family and country (*Air Force One*). Why the filmic landslide? Director Ivan Reitman, who shot 1993's *Dave*, chalks it up to baby boomer solidarity, telling *Time* that Clinton "is just like me....He's my age. There are a lot of commonalities." That might explain the sympathetic portrayals, but it fails to account for the sheer quantity (or the nasty takes). Part of the reason lies with those election results: Without a clear mandate, both supporters and detractors are more likely to go on the offensive. Then there's the chief executive's well-known penchant to be all things to all people. That may not be possible in Washington, but judging from the presidential filmography to date, it's a dream come true in Hollywood.

—Nick Gillespie

Clinton's Half-Court Press

By Brian J. Taylor

The Clinton administration and the Supreme Court haven't exactly seen eye-to-eye in a number of recent high-profile cases. The Paula Jones suit was allowed to proceed. And the Communications Decency Act was voided.

The losses don't end there. In civil rights litigation, Clinton's Justice Department has the least successful record of any recent administration, says Clint Bolick, director of litigation at the Institute for Justice. Federal judges appointed during the Reagan and Bush administrations are more skeptical of the left-liberal view of civil rights than their immediate predecessors; as a consequence, sentiments once expressed in dissents are now finding their way into majority opinions.

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From racial gerrymandering to preferences in government contracting to school desegregation, the government's arguments have been consistently rejected—both in the Supreme Court and in lower federal courts. This trend is likely to continue, says Bolick, as long as the Clinton administration persists in "defending the indefensible."

The next case to watch: the Piscataway, New Jersey, reverse-bias suit, which the Court will hear next term. In 1989 the local school board eliminated a teaching position at a high school by firing Sharon Taxman, a white teacher the board admits had the exact amount of seniority as the black teacher who was allowed to keep her job. And even though there was no record of past discrimination in Piscataway's public schools, the board said race was a factor in keeping the black teacher rather than deciding by, say, a coin flip. The Court of Appeals for the 3rd Circuit cried foul, ruling that Taxman's firing violates Title VII of the Civil Rights Act of 1964, which states that race can only be used to remedy past discrimination. The Bush administration supported Taxman's complaint, but early in Bill Clinton's first term the Justice Department took the almost unprecedented action of switching sides and backing the school board.

Alcohol Blindness

By Jacob Sullum

In 1972, looking at data from the Framingham Heart Study, Harvard epidemiologist Carl C. Seltzer noticed that moderate drinkers were less prone to heart disease than abstainers. As it turned out, Seltzer was the first of many researchers to observe that alcohol seems to offer protection against heart disease. But when he tried to share this finding with his peers, the National Institutes of Health, which funded the study, refused to approve his paper. Given alcohol's known hazards, the NIH argued, it would be irresponsible to encourage drinking by publicizing its possible benefits.

Writing in the May *Journal of Clinical Epidemiology*, Seltzer quotes an NIH official who reviewed his paper: "An article which openly invites the encouragement of undertaking drinking with the implication of prevention of coronary heart disease ▶

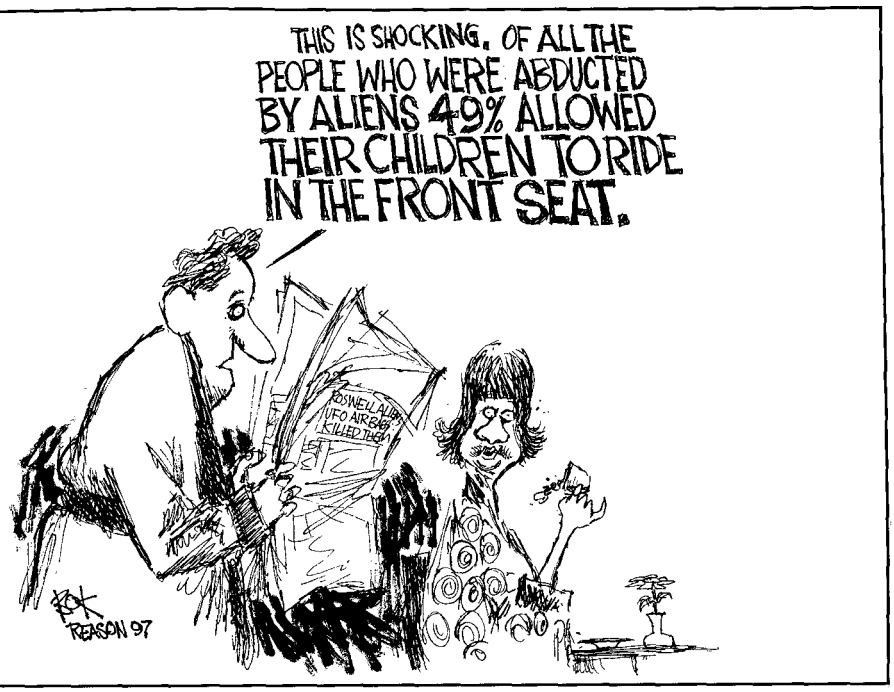
BRICKBATS

♦Dr. Henry Jordan is a member of the state Board of Education in South Carolina, but he apparently has something to learn about brotherly love. In a discussion about the posting of the Ten Commandments in public schools, Jordan said, "Screw the Buddhist, and kill the Muslims. And put that in the minutes." Jordan later said that he thought the meeting was over, but tapes of the meeting clearly show the board going on to discuss other items on the agenda.

♦In neighboring Georgia, Attorney General Mike Bowers is the leading contender for the Republican gubernatorial nomination next year. Bowers gained fame defending the state's anti-sodomy law before the Supreme Court. He also made headlines a few years later when he withdrew a job offer from a woman after learning she was a lesbian. Now the married Bowers has admitted a decade-long affair with a female staff member, who was also married. Adultery is also illegal in the Peach State. So Bowers apparently feels that those who break the law are unfit to work in the attorney general's office, but they aren't unfit to be attorney general or governor.

♦Robert Kusznikow has a well that provides perfectly safe water, so he sees no reason to pay for a connection to the city water system. But Stafford Township, New Jersey, has a reason for Kusznikow to buy their water: It's the law. After a three-year battle, Kusznikow was arrested and sentenced to 90 days in jail and a $1,000 fine for his refusal to hook up to city water.

Chip Bok


THIS IS SHOCKING. OF ALL THE PEOPLE WHO WERE ABDUCTED BY ALIENS 49% ALLOWED THEIR CHILDREN TO RIDE IN THE FRONT SEAT.
REASON 97

would be scientifically misleading and socially undesirable in view of the major health problem of alcoholism that already exists in the country." Today the Bureau of Alcohol, Tobacco, and Firearms still echoes that position, arguing that any statements about the health benefits of alcohol, "regardless of their truthfulness, [are] inherently misleading and particularly deceptive in view of the possible social effect of encouraging the consumption of alcoholic beverages by those who for psychological or physical reasons are adversely affected thereby." (See "BATF Out of Hell," May 1994.)

Seltzer offers the NIH episode as an example of how government agencies may suppress or alter research that runs counter to official policy. He cautions, "What should be epidemiologic science may then become political science."

Red Harvest

By Michael W. Lynch

It was widely believed that congressional leaders were eager to seal this summer's budget deal so they could escape Washington for their August vacations. In fact, they were facing a more pressing deadline. Despite all the rhetorical hot air about balancing the budget by 2002, the budget threatened to balance itself as early as next year.

Stronger than expected growth in tax collections, caused by a rising job base and a vibrant economy, had led government forecasters to reduce their deficit projections for the past three years. In February, the Office of Management and Budget projected a fiscal year 1997 budget deficit of $126 billion. By May, the Congressional Budget Office had reduced that projected deficit to $67 billion. Neither the OMB nor the CBO updated the estimates prior to the summer's budget deal for fear that news of a disappearing deficit would dissipate support for the agreement. By July budget watchers, extrapolating from monthly Treasury Department reports, estimated that the coming year's deficit would be no more than $45 billion. After the legislation was signed, OMB estimated this year's deficit would fall to $37 billion. The CBO projected a $34 billion gap.

"If Congress did absolutely nothing, the federal budget would have fallen into balance as early as next fiscal year," says William Armistead, a vice president at Citizens for a Sound Economy. Congress, of course, did act, in concert with the White House. And their so-called balanced budget act increases spending over current levels, keeping America in the red for at least a few more years.

Shooting War

By Nick Gillespie

The death of Ezequiel Hernandez, an 18-year-old high school student from the small Texas border town of Redford, is a dispatch from a dark front in the war on

drugs. In late May, Hernandez was shot as he tended his family's herd of goats in the hills outside his home. The gunman was not a drug smuggler, however: He was a camouflaged U.S. Marine, the leader of a four-man squad on the lookout for drug traffic near the Rio Grande.

Since 1989, the U.S. Border Patrol has used military personnel along the Mexican border. Soldiers usually perform surveillance duties since, by law, they cannot confront suspects. They are, however, allowed to return fire, and the Marines claim Hernandez, who carried a .22-caliber rifle to scare off coyotes and other wild animals, fired at them first.

Local residents have challenged that version of events, and the Texas Rangers captain in charge of the state's investigation has said the Marines' account of the shooting doesn't "exactly jibe" with the physical evidence. Pending an ongoing investigation, the Border Patrol has suspended its use of military personnel. In mid-August, a Texas grand jury refused to bring a criminal indictment against the Marine shooter.

Even though the shooter was apparently judged to be "in strict compliance with the rules of engagement" (as a Marine spokesman asserted), it raises difficult questions about federal drug interdiction policies. Chief among them: Why does the government spend massive amounts of money—more than $1 billion a year—on interdiction when its own General Accounting Office report found that such policies "have not...reduced" the "flow of drugs into the United States"? Will the government persist in a policy that does little more than put in harm's way the very people it is meant to protect?

DATA

Fancy Figures

By Kenneth Green

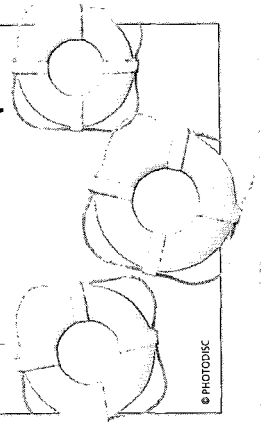
Despite receiving little scientific or public-health support from independent researchers, the Environmental Protection Agency went ahead and made its new, lower limits on ozone and particulate emissions final in July. (See "Polluted Science," August/September.) Unless Congress delays the new rules or a court ruling overturns them, hundreds of regions will soon labor to meet the new standards.

The EPA claims the new rules will save 15,000 lives each year at a cost of only $8.5 billion. It's not likely that 15,000 people are dying from current levels of ozone or particulates, but it's interesting to take the EPA's claim at face value. Compared with the agency's past performance, these new rules would be an amazing bargain—so amazing that it's hard to believe. The new particulate and ozone regulations would have to be *13 times* as cost-effective as the EPA's other rules. Harvard University risk analyst Tammy Tengs has estimated the cost of "life-years saved" from health and safety regulations handed down by various federal agencies and has found that EPA regulators are the most expensive cops on the block. Teng's figures cast considerable doubt on the agency's lowball estimates. If the new particulate and ozone rules instead cost as much as the typical EPA edict, the annual cost of enhanced ozone and particulate regulations alone would be $114 billion—about $10 billion more than the federal government will spend on Medicaid this fiscal year—rather than the $8.5 billion Administrator Carol Browner claims.

The Cost of Health and Safety Regulation

Regulatory agency	Median cost per life-year saved
Federal Aviation Administration	$23,000
Consumer Product Safety Commission	$68,000
National Highway Traffic Safety Administration	$78,000
Occupational Safety and Health Administration	$88,000
Environmental Protection Agency	$7,629,000

Source: "Five-Hundred Life-Saving Interventions and Their Cost Effectiveness," by Tammy Tengs et al., Harvard Center for Risk Analysis



Disaster Didn't Strike

By Helen Gao

Last summer, in-fighting among Republicans prevented New York City's World War II–vintage rent controls from being abolished. By contrast, Massachusetts did away with rent control in a statewide referendum in 1994. And despite tenant activists' dire predictions of wholesale evictions of poor families, the disabled, and the elderly, disaster has yet to strike the state.

One reason, suggests a recent Manhattan Institute study by Henry Pollakowski of MIT's Center for Real Estate, is that few beneficiaries of rent control were poor. Pollakowski found that about half the population who paid below-market rents in Cambridge were white-collar professionals in their prime earning years. A mere one in 10 beneficiaries of below-market rents was elderly. And only 7 percent of tenants applied and qualified for a transitional assistance provision that kept rent control for low-income renters in place for as long as two years.

Contrary to common claims, ending rent control didn't initiate an inflationary spiral. In Boston, the average rent increased 9 percent, from $825 in 1994 to $900 a year later, where it has stabilized.

If anything, the end of rent control promises to produce dividends for local treasuries and new housing for tenants. Pollakowski predicts that Cambridge alone will collect an additional $4.5 million in annual property taxes as rental properties are reassessed at market values. And as the end of price con- ▶

BRICKBATS

♦In Manhattan, employees of the El Quijote restaurant told Jaswinder Pal Singh that they enforced a no-hat rule, and that he would need to remove his turban to be served. Singh, a Sikh, began cursing the manager, and he was asked to leave. Claiming that the turban is a "symbol of pride" in his native India, and that removing it would be "humiliating," Singh has sued the restaurant.

♦Also in New York, Robert Cassar is head of the union that represents the city's parking-ticket writers. And he apparently is providing a lot of business for his rank-and-file. Cassar's car was towed after he failed to pay $5,000 in parking tickets. That's on top of another $5,000 in fines that Cassar *has* paid over the past few years. Cassar is a former traffic agent, and he claims officials in the city Transportation Department are out to get him.

♦The City Council of Berkeley, California, is now wondering where to buy gas for municipal vehicles. Berkeley has long boycotted Arco, Unocal, Mobil, and Texaco because they do business in Burma. It just added Shell and Chevron to the list because they do business in Nigeria. Exxon isn't formally boycotted, but there's that Exxon *Valdez* matter in its past. Said city council member Polly Armstrong, "In the end, we're going to have to look for mineral rights under the city of Berkeley."

—Charles Oliver

trols lures potential landlords into the marketplace, an anticipated construction boom should add 2,500 housing units to Cambridge and Boston, almost a 1 percent increase of the existing stock.

Tenant activists dispute the rosy post-deregulation picture but offer no statistical evidence of a harsher reality. When asked about the effects of rent deregulation, Cambridge tenant activist Bill Cavellini simply said, "It has been a disaster for the people and the city," and hung up the phone.

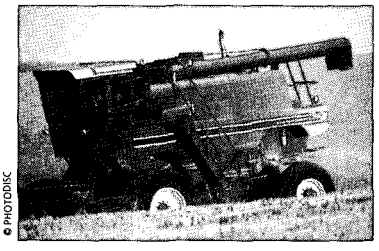
Subsidizing Stalinism

By Brian Doherty

In the 1930s, Joseph Stalin launched one of history's largest campaigns of mass murder in an attempt to collectivize agriculture in the Ukraine. Today, an un-Soviet Ukraine is blessed with struggling private farm plots, which make up only 15 percent of the farmland but provide over one third of agricultural production.

But the U.S. government's Export-Import Bank is busy propping up the collectivist farm legacy of Stalin in Ukraine. Ex-Im, as it's colloquially known, recently underwrote a $187 million sale of John Deere farm equipment that will end up with the huge, inefficient state agriculture collectives in Ukraine.

That's business as usual, says David Kramer, associate director of Russian and Eurasian studies at the Carnegie Endowment for International Peace. Ex-Im also subsidizes sales to the Russian Ministry of Construction and other state-owned enterprises in Turkmenistan and Uzbekistan, in addition to Russia and Ukraine. "Deals like that completely undercut efforts by other U.S. agencies to promote privatization," Kramer complains. Kramer also pointed out, in a *Washington Post* op-ed piece, that Ex-Im's assertion that it is a necessary help in getting *any* U.S. companies into Russia falls flat. "Less than 25 percent of U.S. exports to Russia depended on Ex-Im loans and subsidies [in 1996]," he wrote.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Ian Vásquez of the Cato Institute testified against reauthorization of the Export-Import Bank before a congressional committee in July. (He was the only one of nine people testifying before the Republican-run committee who objected to the bank. The majority of testimony came from officials of companies who benefit from the bank's activities.) The bank's subsidized loans represent corporate welfare to big companies, notes Vásquez—11 of the 19 loan guarantees Ex-Im approved in 1996 in the former Soviet Union went to companies with over $1 billion in annual sales. Vásquez also notes that when the bank "provides subsidies for loans in places that wouldn't attract investment on their own, they reward governments for not reforming." ◆

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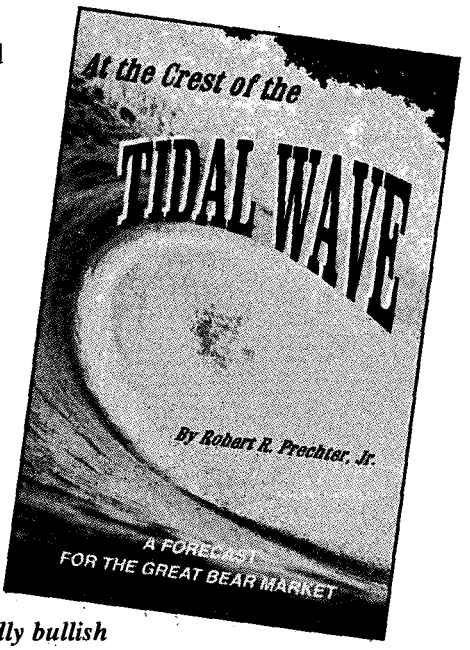

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Let's Make a Deal

As the proposed tobacco settlement heads to Congress, the anti-smoking movement is divided over whether it's a good deal after all. A guide to the players, the alliances they've established, and who hopes to get what.

By Jacob Sullum

By historical standards, the proposed nationwide settlement approved by the tobacco companies last summer was a stunning capitulation. On June 20, an industry whose motto had always been "never settle" announced that it was ready to cough up a ton of money and swallow a mass of humiliating requirements. Among other things, the tobacco companies agreed to pay what amounts to a huge fine ($368 billion) for the crime of selling cigarettes, conceded FDA authority over tobacco products, accepted sweeping restrictions on advertising and promotion (including an end to outdoor ads and the use of human or cartoon figures), endorsed a federal ban on smoking in most nonresidential buildings, promised to finance a $500-million-a-year national media campaign aimed at discouraging consumption of their products, and committed themselves to utterly unrealistic goals for reducing smoking by teenagers, under the threat of further fines.

Implausible as these concessions would have seemed just a year or two earlier, they immediately established a new baseline for the expectations of anti-smoking activists, who treated the compromises hammered out through months of arduous negotiations as an opening offer. John F. Banzhaf, executive director of Action on Smoking and Health, summed up this attitude at a June 25 meeting of the Advisory Committee on Tobacco Policy and Public Health: "I think, as a basic rule of thumb, that anything they are happy to agree to probably is not going to be the most that we can expect, nor very beneficial for the public health." Dr. Jonathan Fielding, vice chairman of the Partnership for Prevention, tried to inject a note of caution: "There's kind of an underlying, fundamental question of whether one wants to see a settlement or not, under any circumstances. We have to always keep in mind that the more we push and the further we push away, the less likely [a settlement] will be....As we add things on, we increase that risk."

The advisory committee, chaired by former Surgeon General C. Everett Koop and former Food and Drug Commissioner David Kessler, seemed to lean toward Banzhaf's view. Its report, delivered to the White House in early July, was a wish list rather than a serious proposal for legislation that Congress can be expected to enact when it takes up the matter this fall or winter. Along with the numerous anti-smoking measures in the proposed settlement, the committee called for big increases in tobacco taxes, elimination of exposure to secondhand smoke, mandatory health insurance coverage for smoking cessation programs, "zero tolerance" smoking policies in schools (including bans on clothing bearing cigarette brand logos), and lots of additional money for anti-smoking groups and researchers. The committee opposed any limits on liability or the Food and Drug Administration's authority over tobacco—the main advantages, aside from settlement of the current lawsuits, that the deal offered the tobacco companies. In fact, the report urged *more* litigation, saying, "All elements of Federal, State, and Local tobacco control policies should be enforceable through lawsuits [brought] by individual citizens."

The dynamic at work in the committee can be seen in its handling of the targets for reducing teenage smoking. Under the proposed settlement, daily smoking by high school seniors is supposed to drop by 30 percent after five years, 50 percent after seven years, and 60 percent after 10 years. Since the baseline for these reductions is a 10-year average, and since smoking by teenagers has been rising in recent years, the agreement actually requires sharper reductions from current smoking levels than these percentages imply. For some, they were not sharp enough. "Some time short of year 10, we should come to 100 percent," said Robert Graham, executive vice president of the American Academy of Family Physicians. "This is an illegal activity. We do not believe that *anyone* underage should smoke or use tobacco products." Banzhaf agreed: "The tobacco industry does have total control over this. They can, through a system of licensing, bring down noncompliance to zero....They can, by raising taxes, decrease the level to anything they want." Fielding bravely demurred: "I just don't think that's realistic, frankly." Visibly nervous about seeming to take the industry's side, he suggested that factors other than company behavior might affect smoking by teenagers. After he received support from several committee members, including Koop, it became clear that the final report would insist only on the unreasonable, not the impossible. Instead of eliminating underage smoking within a decade, it called for "specific and increasingly stringent targets," beginning in the *second* year.

The committee's discussion of the penalties for missing the targets followed a similar pattern. Under the settlement proposal, the companies would pay $80 million for each per-

HENRY PAYNE

centage point by which they missed the targets, a figure based on an estimate of the profit generated by additional customers. The task force assigned by the committee to study the issue instead recommended a fine of $240 million for each percentage point, citing the precedent of triple punitive damages. This turned out to be the moderate position. Banzhaf said the main point of the fine should be deterrence, so the higher, the better. Why not 10 or 100 times the estimated profit? "The penalty in the current settlement," he said, would amount to just a nickel a pack, so it "would be a five-cent license to continue to addict and kill children." In the end, the committee declared the $80 million penalty inadequate and called for "predictable financial penalties sufficiently severe to act as a strong deterrent." It also rejected the proposed $2 billion annual cap on penalties and a provision allowing companies to obtain a rebate of up to 75 percent if they could show they had made a good-faith effort to reduce underage smoking. In other words, even if the tobacco companies do everything they're supposed to do, they would still be penalized should teenagers fail to cooperate.

The deliberations of the Koop-Kessler committee reflected splits within the anti-smoking movement caused by the settlement proposal. No one was prepared to say the deal was satisfactory as written. Everyone agreed the FDA should have unqualified, immediate authority to regulate tobacco products—including the power to dictate their content or remove them from the market—rather than the limited, phased-in authority described in the proposal. Nobody liked the liability provisions, which would allow lawsuits by individuals while eliminating punitive damages for past conduct, banning future class actions, and capping yearly outlays. But while some committee members were relatively cautious about attaching new conditions to the settlement, fearing that demands too numerous or too extreme might sink the whole deal, others did not hesitate to insist that the industry make additional sacrifices in return for less protection. Major players in this intramural debate can be roughly divided into three groups: the *dealers*, who seem committed to making the settlement work, albeit with some modifications ("yes, but..."); the *skeptics*, who insist on major changes but recognize the need for compromise ("no, but..."); and the *militants*, who oppose any arrangement to which the industry would conceivably agree ("no way"). The classifications are based on the tone and timing of people's comments as well as the substance of their demands.

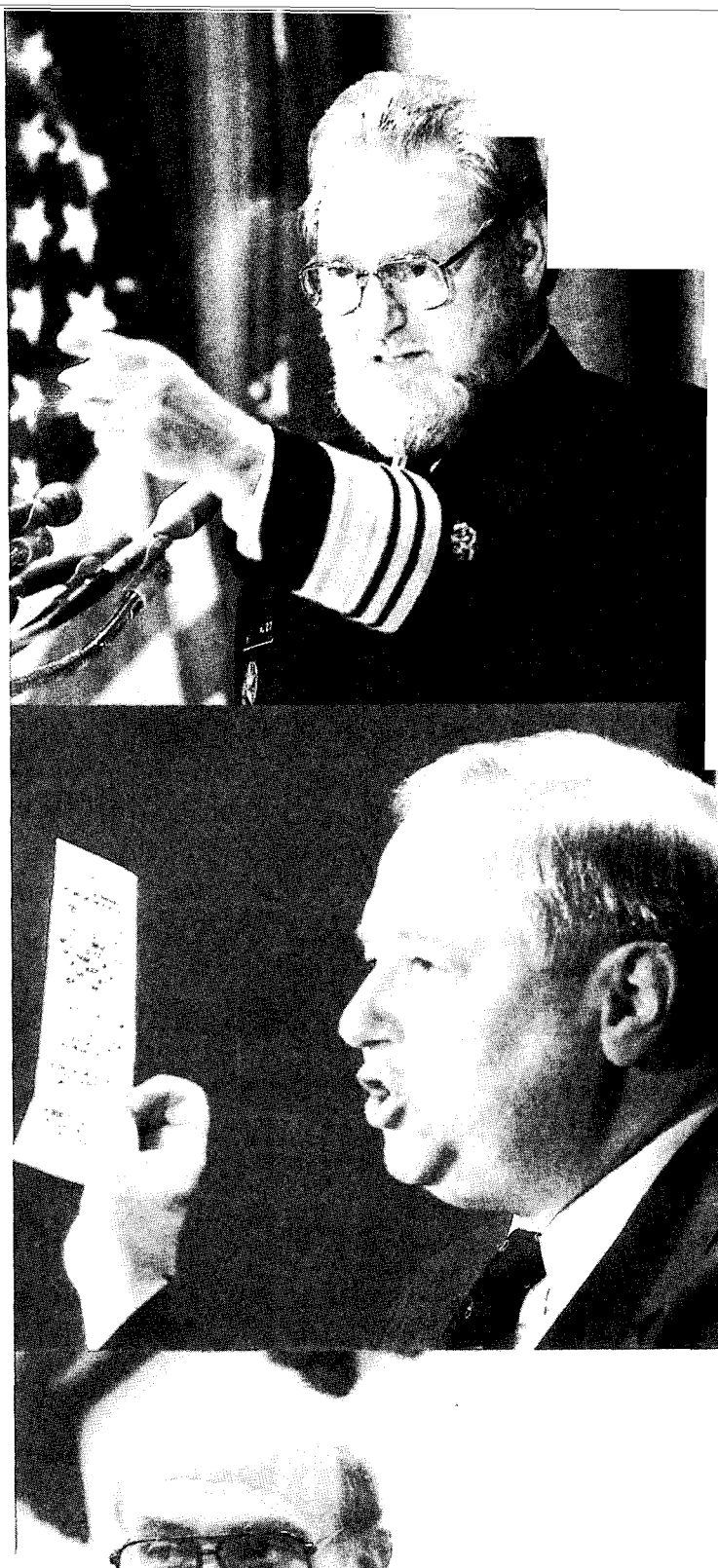
Mississippi's Mike Moore and the other attorneys general can brag that they brought the tobacco companies to the table, gaining money for their state treasuries and concessions that will "improve the public health" —achievements that may help them win higher office.

Dealers

The Attorneys General. About 40 states have sued the tobacco companies, seeking compensation for the costs of treating smoking-related illnesses under Medicaid. Mississippi Attorney General Mike Moore pioneered this kind of suit in 1994, based on an untested and dubious legal theory, and spearheaded the negotiations. Moore and the other attorneys general can brag that they brought the tobacco companies to the table, gaining money for their state treasuries and concessions that will "improve the public health"—achievements that may help them win higher office. Not all of them are enthusiastic about the deal, however. While Mississippi dropped its lawsuit, which would have gone to trial in July, Minnesota Attorney General Hubert H. Humphrey III (see below) threatened to continue with his case, scheduled for trial in January.

The Private Attorneys. The states farmed out their suits to plaintiffs' lawyers, many of whom are also involved in private tobacco cases. Among these are 17 class actions sponsored by a consortium of 65 prominent law firms and hundreds of lawsuits filed on behalf of individual smokers or their families. Lawyers who played an important role in the negotiations included Florida attorney Hugh Rodham, President Clinton's brother-in-law; Mississippi attorney Richard Scruggs (Senate Majority Leader Trent Lott's brother-in-law), who represented most of the states; and South Carolina attorney Ronald Motley, who had a hand in both the state lawsuits and the class actions. Scruggs and Motley both got rich suing asbestos companies, and they stand to get even richer as a result of the tobacco deal. The attorneys agreed to handle these suits in exchange for a share of any damages: 10 percent to 25 percent in the state lawsuits and 30 percent or so in the private lawsuits. Their percentage of any nationwide settlement will be much lower, lest public outrage threaten the deal, but they are still likely to earn the biggest legal fees in history. Proposals have ranged from $2 billion to $18 billion.

National Center for Tobacco-Free Kids. Established in 1996 with $30 million in grants from the Robert Wood Johnson Foundation and the American Cancer Society, the center immediately became the best-funded and most conspicuous anti-smoking organization, arousing resentment from groups with a longer history. The center's vice president, Matthew Myers, was the main anti-smoking activist involved in the negotiations. An attorney with solid anti-tobacco credentials, having worked for the Federal Trade Commission and the Coalition on Smoking or Health, Myers nonetheless has been criticized by other activists for his readiness to compromise. His boss, publicist William Novelli, pleaded for realism with the Koop-Kessler committee: "I hope we're not going to miss this opportunity, but what I heard this morning makes me afraid...that the committee is going to produce a utopian policy blueprint and a separate letter on the settlement proposal that will threaten to drive the industry and its legislative allies away." Novelli's group is well positioned to claim the lion's share of the billions set aside for anti-smoking messages, smoking cessation, and other "tobacco control" efforts.



Former Surgeon General C. Everett Koop (top) **signaled support for a settlement in June. But in July, he urged lawmakers to hold "the industry accountable." Anti-smoking activist John Banzhaf** (center) **accused plaintiffs' lawyers and attorneys general of selling out the public health so they could get billions of dollars from tobacco companies. Plaintiffs' lawyer Stanley Rosenblatt** (bottom) **opposes the settlement because it could reduce the fees he would win in court.**

American Cancer Society. When the settlement proposal was announced, ACS CEO John R. Seffrin said he was "encouraged by the public health concepts" it embodied. A few weeks later, the society issued a statement saying the FDA should have "complete and unfettered authority" to regulate nicotine and other tobacco ingredients, and it recommended stronger penalties for missing the smoking reduction targets. But ACS President Myles Cunningham said the society "still believes at this point that a settlement agreement with tobacco companies has more potential for advancing public health than the uncertain outcome of lengthy continued litigation or piecemeal legislation."

American Medical Association. Lonnie Bristow, then president of the AMA, sat in on the settlement talks. In June he called the deal "a marked advance" but said the organization would not take a formal position until a task force had reviewed the issue. The AMA, which was still taking research money from the tobacco companies in the 1970s and is viewed as a Johnny-come-lately by some longtime anti-smoking activists, has to tread carefully in any area involving compromises with the industry.

American Heart Association. The day the proposed deal was announced, AHA President Jan L. Breslow said, "The American Heart Association is encouraged by the fact that the settlement talks have produced a document for the health community to review. The American Heart Association recognizes our important responsibility to carefully consider such a proposal that could potentially prevent millions of people from dying prematurely." In addition to insisting on full FDA authority, the AHA said "the rights of victims of the tobacco industry should not be abridged in any way."

Skeptics

David Kessler. The former FDA chief claimed jurisdiction over tobacco products in 1994, contrary to the position taken by every one of his predecessors, by the federal courts, and even by tobacco's opponents in Congress. Not surprisingly, he mainly objects to the tobacco deal's limits on FDA authority, which require the agency to show that restrictions on nicotine content would reduce health risks, would be technologically feasible, and

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would not create a significant black market. The deal would also prevent the FDA from banning nicotine from cigarettes for at least 12 years. Despite his reservations, Kessler has a strong interest in salvaging the industry's concessions, since the same federal judge who upheld the FDA's jurisdiction last April also said the agency could not regulate tobacco advertising and promotion. "I'd like to see a resolution," Kessler said on *Meet the Press* in June, "and I certainly support some of the elements." He took a harder line in congressional testimony on July 29. "You can do better than the settlement," he said. "You don't need the industry's money....All you need is the nation's collective courage."

C. Everett Koop. Koop, who as surgeon general in 1984 called for "a smoke-free society" by 2000, expressed the same concerns about FDA authority as Kessler. He also urged heavier penalties for failure to meet the smoking reduction goals and criticized the limits on liability. Like Kessler, though, he seemed open to some sort of deal. "I have often been misquoted that I am adamantly opposed to a settlement," he said on *Nightline* in June. Many anti-smoking activists, he noted, "want to see the culprit, the tobacco industry, flogged in public, and I understand how they feel. I feel that way myself. They are very guilty. But flogging a company in public, if it does not produce something for the health of the American people, is a futile gesture." Like Kessler, he seemed less open to compromise when he testified before a Senate committee in July, urging lawmakers to "face the scourge of tobacco for what it is and legislate a tobacco policy that holds the industry accountable."

The White House. President Clinton would like to claim he helped save the youth of America from Big Tobacco, and to do that he needs a package of new regulations. The administration's main demand is unlimited FDA authority. It may also insist on heavier penalties, and it has questioned the tax deductibility of the industry's payments. But so far no one at the White House has complained about the liability restrictions. "I don't think any of us...are reviewing it with the view toward either saying we're going to embrace it or kill it, and there's no other option," Clinton said at a press conference in June, sympathizing with members of Congress who "were hoping that if they couldn't completely embrace it, that at least it could be salvaged."

Henry Waxman. The California Democrat, one of the industry's staunchest opponents in the House, welcomed the opportunity to put his imprint on tobacco legislation. "There is no way in the world this proposal gets enacted the way it was announced," Waxman's press secretary, Phil Schiliro, told *The New York Times* in June. "There will be enormous differences between the proposal and the legislative language....What remains to be seen is how different, and how long it takes and whether it ever gets done at all."

Joseph Califano. As Jimmy Carter's secretary of health, education, and welfare, Califano said smokers were "committing slow-motion suicide" and declared tobacco "Public Health Enemy Number One." Now president of the Center on Addiction and Substance Abuse at Columbia University, he criticized the tobacco deal in a June 23 *Washington Post* op-ed piece, complaining about the size of the payout, the liability limits, the lack of a tax hike (though the fine imposed on the industry would have the same impact once it was passed on to customers), and the absence of payments for the federal share of smokers' health coverage. "The big question," he wrote, "is whether the president and Congress can build on this work and get all American taxpayers a fair deal from an industry that confesses that for years it has made its profits by lying, pushing an addictive product on American teens and killing more Americans than have died in all our wars and auto accidents combined."

Militants

American Lung Association. The ALA, which used to be allied with the American Cancer Society and the American Heart Association in the Coalition on Smoking or Health, is now noticeably more extreme. It opposed the tobacco talks from the start, and after the proposed deal was announced, ALA Managing Director John R. Garrison said flatly, "Now is not the time to settle."

Ralph Nader. In a June 19 letter to the ACS, the AHA, the AMA, and the National Center for Tobacco-Free Kids, Nader warned against "premature support for a settlement," saying "those involved in the negotiations and their close supporters have become invested in the negotiation process." He also implied that their judgment had been compromised by the lure of anti-smoking money. He held out the hope that "a host of new disclosures, initiatives, regulatory controls and lawsuits not yet contemplated" would force the "tobacco drug addiction companies" to give up more.

Action on Smoking and Health. ASH Executive Director John Banzhaf, who as a young lawyer in 1966 filed a complaint with the Federal Communications Commission that eventually led to the ban on broadcast advertising of cigarettes, used to call himself "the Nader of the cigarette industry." So it's not surprising that he and Nader see eye to eye on the proposed settlement. During the talks, Banzhaf complained that avaricious plaintiffs' lawyers and ambitious attorneys general have their own agendas and "can hardly claim to represent the antismoking or public health community." As a member of the Koop-Kessler committee, he repeatedly rejected the idea of "accepting the industry position [i.e., the proposed settlement] as a starting point."

Hubert H. Humphrey III. "Every time we think we're dancing on this industry's grave," the Minnesota attorney general told the Koop-Kessler panel two days before the settlement proposal was announced, "they have instead found a way to keep dancing on those of our loved ones." If the scheduled trials proceeded, he argued, more damning information would emerge, and the industry would be under greater pressure to compromise. "What's the rush?" he asked. "If we just take just enough time to get it right, America can make the rules, and we won't have to trade away the rights of victims or the powers of the federal government to fashion a real solution." After the details were made public, he said, "I fear that this deal could be a tobacco bailout." In congressional testimony on July 16, he called the agreement a "Trojan Camel."

Stanley Rosenblatt. A pioneer of the tobacco class action, Rosenblatt is handling two big cases: *Broin v. Philip Morris*, which went to trial in July, represents flight attendants who claim

injuries from secondhand smoke, while *Engle v. R.J. Reynolds*, scheduled for trial this fall, represents Florida smokers. His suits are much further along than the class actions filed by the consortium of big-name lawyers, and he is a more passionate enemy of the tobacco industry, so he is less eager to settle. The trial judge in *Broin* ruled that the case could continue despite the proposed settlement.

American Trial Lawyers Association. The tobacco deal is good for *some* trial lawyers but not for trial lawyers as a whole, since it limits the potential for future income. In July ATLA said it would oppose any settlement that "restricts trial by jury or otherwise compromises access to justice, preempts state laws or limits compensatory or exemplary [punitive] damages."

Stanton Glantz. Writing in the *Los Angeles Times* on June 23, the co-founder of Californians (now Americans) for Nonsmokers' Rights noted that tobacco stocks had gone up during the settlement talks. "The business community clearly thinks this deal is good for tobacco," he said. "And what is good for tobacco is bad for public health." If litigation is allowed to continue, Glantz predicted, "the tobacco industry will lose enough of these cases to be brought to its knees. At that point, the same stock market that has been bidding up tobacco stocks will force R.J. Reynolds, Philip Morris and the others out of the tobacco business." With the stocks plummeting, he said, the government should take over the tobacco business, shut down foreign operations, and "make plain cigarettes available...for smokers who can't quit." Glantz compared the tobacco companies—unfavorably—to Timothy McVeigh, convicted of murdering 168 people in Oklahoma City. "The tobacco industry has killed 10 million Americans since 1964," he said. "No attorney general or politician ever considered letting McVeigh cop a plea; the same should be true for the tobacco industry."

"The tobacco industry has killed 10 million Americans since 1964," wrote anti-smoking activist Stanton Glantz in the *Los Angeles Times*. "No attorney general or politician ever considered letting McVeigh cop a plea; the same should be true for the tobacco industry."

With their fantasies of dictating terms to a vanquished enemy, hard-liners like Glantz refuse to acknowledge that the policy changes they want will require the industry's cooperation. Given recent Supreme Court rulings in commercial speech cases, for example, it's unlikely that limits on advertising and promotion like those in the proposed settlement would pass constitutional muster if the tobacco companies did not consent to them. In any case, the FDA does not have the statutory authority to impose such restrictions. As Novelli told the Koop-Kessler committee, "the tobacco industry is not on the canvas." It can continue to fight in the courts and legislatures for decades to come.

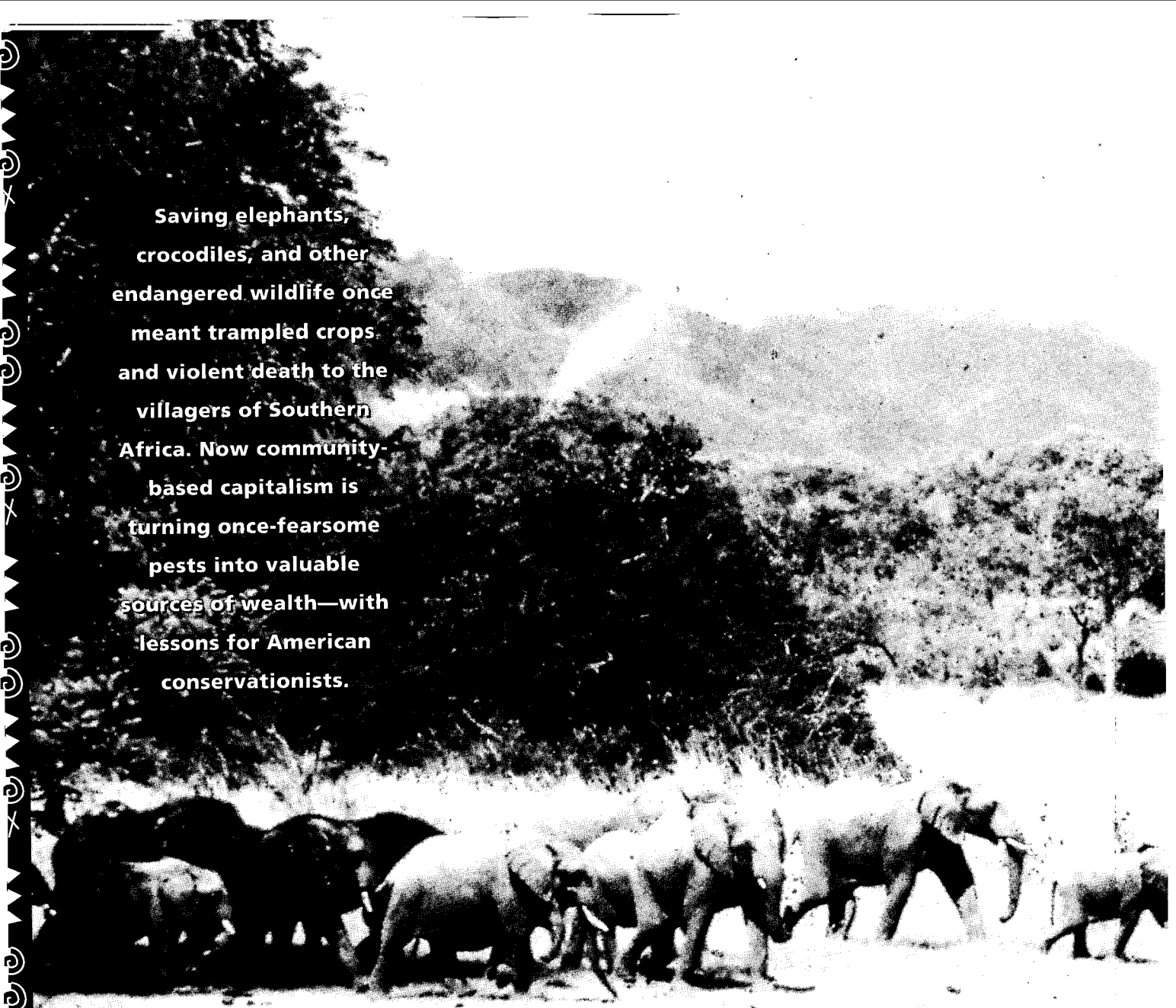
Even the moderates may insist on terms the industry won't accept. "We recognize that this is going to go through the legislative process," a Philip Morris lawyer told the Senate Judiciary Committee in late June. "Obviously, there are parts of this that the industry might find unacceptable to lose, and there are provisions that the industry would find acceptable to see modified." The tobacco companies may be willing to give up the limits on FDA authority, but it's hard to imagine why they would agree to a package that offered no protection against future lawsuits—the main threat that brought them to the table in the first place. And there's got to be an upper limit to the amount of money they're prepared to shell out.

When push comes to shove, of course, some of the deal's critics may be prepared to give up what they now present as nonnegotiable demands. Since the key parties have a strong interest in putting together a package, it seems likely that some sort of legislation will emerge that gives the industry a measure of security and predictability in exchange for anti-smoking policies and programs that tobacco's opponents could not otherwise hope to see anytime soon. But the tobacco companies will have to get something other than an end to lawsuits in which the plaintiffs are willing to settle. After all, they could get that without any help from Congress.

For anyone who believes that smoking is a matter of personal choice in which the government has no business meddling, the arguments about the details of this package will be frustrating. The news media have long portrayed the tobacco controversy as a struggle between greedy merchants of death and selfless defenders of the public health, and the industry's dramatic concessions left the ground for debate narrower than ever. It seemed the only issue left to resolve was whether the deal went far enough.

But whatever Congress ultimately decides, the crusade for a smoke-free society will continue, because it is aimed at the behavior of individuals, not the behavior of corporations. Even if tobacco's opponents could achieve the chimerical goal of eliminating smoking by minors, they would not be satisfied. "The goal is not just to reduce childhood addiction to nicotine and to tobacco products," Mark Pertschuk of Americans for Nonsmokers' Rights reminded the Koop-Kessler committee. "It's also to reduce adult addiction to levels which are feasible." Michele Bloch of the American Medical Women's Association made the same point: "I would ask that in our own recommendations, in addition to putting youth as our top priority, we not tie our hands from working on reducing adult smoking through penalties, etc., when the time comes." Smokers should stock up while they can.

Senior Editor Jacob Sullum (jsullum@aol.com) is the author of For Your Own Good: The Anti-Smoking Crusade and the Tyranny of Public Health, *forthcoming from The Free Press. Creators Syndicate will start carrying his weekly newspaper column in October.*



Saving elephants, crocodiles, and other endangered wildlife once meant trampled crops and violent death to the villagers of Southern Africa. Now community-based capitalism is turning once-fearsome pests into valuable sources of wealth—with lessons for American conservationists.

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BY KARL HESS JR.

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U C C E S S

MNKHOWO WORE A BLUE BASEBALL CAP WITH a two-inch-square piece of tin riveted to its cloth front; it was hand-stamped "Jurassic Park." He was one of a dozen villagers who had come to Kazuni Camp, where I was tenting, to discuss wildlife. Now that the others were gone, he and I sat alone in the shade of the meeting tree, watching a herd of 75 cape buffalo graze and an even larger herd of elephants water at the edge of Lake Kazuni, less than 100 yards away. I recall the hat best of all, not because it seemed silly on a grown man but because it seemed so right in a corner of the world where humans were about as far up the food chain as a cow or a pumpkin leaf.

I was in Vwaza Marsh Wildlife Reserve in northern Malawi, a 500-square-mile protected zone in a sliver of a country wedged precariously between Zambia and Mozambique. I was there to work on a conservation project to help stem the loss of that country's wildlands and wildlife, and to do so by reconciling villagers and Jurassic-sized beasts.

Just a week earlier I had been on the Shire River in southern Malawi, along the eastern flank of Liwonde National Park. The scout who traveled with me carried a .303 British Enfield rifle and seven rounds of ammunition—hardly a threat to the hundreds of wary hippo eyes that followed us on our course up the river. He gestured with the gun toward a bank in an opening of tall reed grasses where a village woman, washing her family's clothes, had been dragged screaming and gasping to the river's bottom by a 15-foot crocodile. He shifted the muzzle inland to where a marauding herd of elephants had just wreaked havoc on village croplands and left six men and boys crushed and disemboweled. Later, at Vwaza Marsh, a buffalo would attack a woman and her child as they hauled jugs of cooking water back to their home. The woman would survive; the child would not.

Events like these have made wildlife more a curse than a blessing to the millions of African farmers who must live at the edge of protected areas or husband their livestock in pasture lands that buffer parks and reserves. Yet the curse they face is not so much fear for life and limb, or even loss of crops; rather, it is the anger and anguish of having land that could be used to feed their families locked up by the government, either through parks or game laws, for animals that they cannot legally hunt and whose only apparent value is to serve white hunters and tourists. And in places like Malawi, where the population density (over 200 people per square mile) and birth rate (nearly 3 percent) are among the highest in Africa, local tolerance for the luxury of protected wildlife is close to zero. Malawians, like most Southern Africans, see parks and wildlife as government business, alien and contrary to their own business of survival.

Under such conditions, the task of conserving large, native mammals, even in a land that is naturally rich and diverse in life, is formidable. Yet changes are under way in Southern Africa—changes that give villagers an economic stake in preserving wildlife and its habitat. If not derailed by the United States, the new approach could alter forever the relation of people to wildlife and the way we think about and profit from natural resources. It might even teach us a thing or two about how to manage our own environmental riches.

AFRICA'S WILDLIFE HAS ALWAYS HELD A FASCINATION FOR non-Africans—an attraction that has proven costly, if not fatal, to the men and women who have borne the burden of the West's love affair with charismatic mega-fauna. Ernest Hemingway, among others, sensed the schism. On the one hand, he scripted the safari hunt into a masculine icon as evocative as the Marlboro cowboy. As a hunter, he saw in the wilds of Africa, and in the pursuit of its game, truths that could not be found in tamer civilization. Among its green hills, he wrote, "I could shoot and fish. That, and writing, and reading, was all I cared about doing." But Hemingway cared also for what he saw happening to the African landscape under Western rule. "A continent ages quickly once we come," he wrote. "The natives live in harmony with it. But the foreigner destroys." And he was right, though not in the romantic sense he intended.

In the centuries that preceded European settlement of Southern Africa (defined here as the phalanx of nations from Mozambique, Zambia, and Namibia in the north to South Africa in the south), wildlife and people co-existed to a degree unknown elsewhere in the world. While North American aborigines drove mammoths, giant beaver, and saber-tooth tigers to extinction, while early Europeans wiped out lions and rhinos, and while Asians simplified their landscapes, Africans lived in relative accord with creatures that were no less grand or ferocious. How and why they did so is a matter of conjecture. Perhaps it was the gradual co-evolution of the two, as opposed to the sudden and disruptive migration of early people across an emergent land bridge connecting Asia to a previously isolated North American wildlife haven. Perhaps, too, it was the constancy and small size of the African population in comparison to European and Asian numbers—too few people to either overhunt large mammals or exhaust their habitat. In any case, it is unlikely that Southern Africans enjoyed, or even needed, the most rudimentary wildlife management skills in a subcontinent where resource abundance, not scarcity, was the rule.

All of that changed in the mid-to-late 19th century as white settlers arrived en masse in Southern Africa, drawn by the lore and lure of diamonds, gold, and ivory. The ancient accord between people and wildlife shifted decidedly to the advantage of the former. At first, new technologies in the form of repeating-fire rifles and more-sophisticated snaring traps gave humans a clear edge; for the first time, they could harvest game animals in large numbers for expanding markets in meat, skin, horn, and ivory. Other technologies, in the form of Western medicine and sanitation, sparked a demographic revolution. In places like Rhodesia (now Zimbabwe), the black population exploded 20-fold during the 90-year reign of white settlers. Roughly the same occurred elsewhere. A rising Southern African population, with a commensurate hunger for more land and food, pushed wildlife, now scarcer than ever, to the furthest margins of its historic range. Harvested by all without limit, and effectively controlled by none, elephants, rhinos, crocodiles, and leopards fell victim to the tragedy of the commons.

It is possible that native Africans at the village and tribal level, faced with a burgeoning population, might have created new local institutions to communally govern, allocate, and conserve the increasingly scarce wildlife resource, much as they had been able to do through traditional rules and religious and totem taboos in the era of relative wildlife abundance. But they never had a chance. White colonial policies pre-empted local solutions. To counter the mounting slaughter of elephants and other key game species—in which, ironically, white settlers had taken the early lead—governments simply outlawed traditional hunting and instituted Western-style game management founded on the twin pillars of state wildlife ownership and centralized, command-and-control conservation.

IN EFFECT, WHITE AFRICAN STATES TOOK WILDLIFE FROM the historic control, and effective ownership, of self-governing tribal bodies and placed it into the caldron of the open-access commons. But they did so unintentionally. Their plan was to save dwindling African game by restricting its future harvest to paying hunters and proscribing its traditional harvest by black

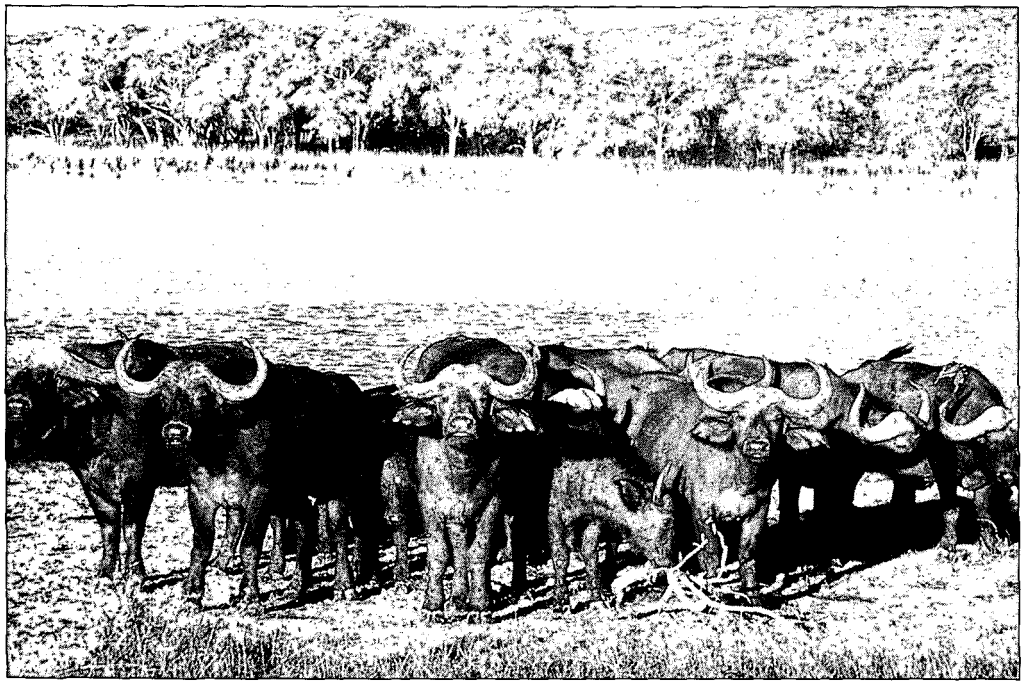
tribesmen. It was an idea that had worked admirably in North America, but in the bush of Southern Africa it backfired.

Now off-limits to hunting by native Africans, elephants and kindred species became what they had never been before: simple marauding pests with no redeeming economic or social worth (except on the black market). Worse, native Africans now saw wildlife as alienated property, stolen and expropriated by a state they had no role in making. Bereft of all legal access and claim to wildlife, Africans donned the only role left to them by their governors: They became outlaws. They resorted to poaching to stem wildlife destruction of their crops, to provide meat to their families, and to trade in skins, horn, and ivory. And they assumed that role with a vengeance, stewarding it to perfection during the wars of liberation, when wildlife was not only the enemy but the symbol of hated white rule. Tragically, a millennium of relative harmony between man and beast disintegrated into a full-fledged killing spree.

But there is more to the story. White settlers also fell prey to the logic and tragedy of a state-imposed wildlife commons. With hunting tightly controlled and the commercial use of wildlife proscribed, they behaved much like their native counterparts, systematically erasing valueless wildlife from the African savannah and veld to make way for profitable domestic livestock. The state, in turn, made the shift in land use from wildlife to cattle cheap and easy by lending capital to ranchers, paying for fences, subsidizing eradication of the tsetse fly and hoof-and-mouth disease, moving more tribal lands into white ownership, and providing massive gun power to eliminate wildlife that preyed on domestic crops and livestock. By the 1960s, the combined ecological might of unrestrained poaching, government-subsidized ranching, and skyrocketing black populations—all in the context of highly centralized state game policies—had reduced wildlife habitat in Southern Africa to a fraction of what it had once been. In the blink of a century, 90 percent of the bulk mass of all grazing animals in the green hills of Africa had shifted from rhinos, elephants, kudu, sable, giraffes, zebras, buffalo, roan antelope, impala, and gazelles to European-bred cattle.

THE WARS OF LIBERATION AND THE SUBSEQUENT INDEPENdence of Southern Africa from white rule were not the watershed events that started the subcontinent on the long trek to erasing the environmentally destructive legacy of the command-and-control approach to wildlife management. Changes were under way in wildlife policy long before colonial rule peaked and faded. By the early '60s, both blacks and whites were painfully aware of the high price wildlife protectionism was extracting from the land. Big game numbers were at historic lows, and species such as elephants, crocodiles, and leopards were perilously close to extinction. Prospects for the future were bleak, given the relentless advance of poaching, cattle ranching, and human population.

In effect, wildlife had become an ornament of the state, a luxury for camera-toting tourists and a handful of trophy hunters, yet a luxury that subsistence and commercial farmers—the very ones who controlled the bulk of its habitat—could ill afford. The state, in its caring wisdom, had turned communal and private landholders of all colors against wildlife, divorcing creatures great and small from the physical habitats that had always nurtured them and eroding the local customs that might have protected them from overexploitation. In the wake of its national laws, the state left an ecological and political vacuum into which the worst of the commons rushed unrestrained.



By 1990, 75 percent of all Zimbabwean ranchers in areas too dry to support crop production had shifted partly or entirely to wildlife ranching—an easy economic decision, given the near quadruple net profit per acre advantage held by wildlife over cattle. Groups of ranchers combined to form "conservancies" of five to 25 properties, each with common rules and objectives, and each with sufficient land base to reintroduce far-roaming yet economically valuable species such as elephant and cape buffalo.

PHOTOS: KARL HESS JR.

Solving the state-made wildlife crisis came first and most easily on privately owned lands. It started with a simple and common-sense idea: If people can benefit from wildlife, their attitudes and actions toward wildlife will improve. Starting in Namibia in 1967 and then extending to Zimbabwe in 1975, lawmakers put the idea into action. Large landowners were allotted ownership rights to wildlife—an idea totally alien to the European and U.S. tradition of exclusive state ownership. Wildlife now had a value, not only a value that could be captured

and maximized by prudent private stewardship but one which far exceeded its costs in terms of crop and livestock loss. White landowners, for the first time since the imposition of colonial rule, were free to make economically informed—and, as it turned out, ecologically desirable—market decisions on how best to use their land.

Wildlife was the clear winner. By 1990, 75 percent of all Zimbabwean ranchers in areas too dry to support crop production had shifted partly or entirely to wildlife ranching—an easy economic decision, given the near quadruple net profit per acre advantage held by wildlife over cattle. Groups of ranchers combined to form "conservancies" of five to 25 properties, each with common rules and objectives, and each with sufficient land base to reintroduce far-roaming yet economically valuable species such as elephant and cape buffalo.

Over the years the benefits of private ownership and cooperative conservancies have accrued to a range of endangered species. Liberal game ranching laws now accommodate the lucrative business of crocodile farming. Crocodile eggs are collected in the wild, and the hatchlings are raised for domestic slaughter. A significant percentage, though, are returned to the wild to seed new populations. Once on the edge of extinction, crocodiles are now thriving in areas of Southern Africa where their commercial exploitation is allowed.

The benefits of private enterprise have also spilled over to nonfarmed wildlife. Black and white rhinos, for example, are flourishing on private ranches, and elephants are making dramatic comebacks. More telling still is the tale and status of leopards and cheetahs, species long viewed and treated as vermin by ranchers fearful for the well-being of their livestock. In Zimbabwe, leopards were removed from protected status, endowing them with high market value as trophies and pelts. Now that leopards are money-making assets, their numbers are on the upswing, and the use of dogs or traps to gratuitously kill them is blocked by social sanction and the economic incentive to sustain a flourishing population for lucrative hunts. In contrast, cheetahs, which were less numerous than leopards, were kept in protected status, suppressing whatever commercial value they might have had. They remain, for that reason, imperiled; they are, in ranchers' eyes, vermin with no redeeming value.

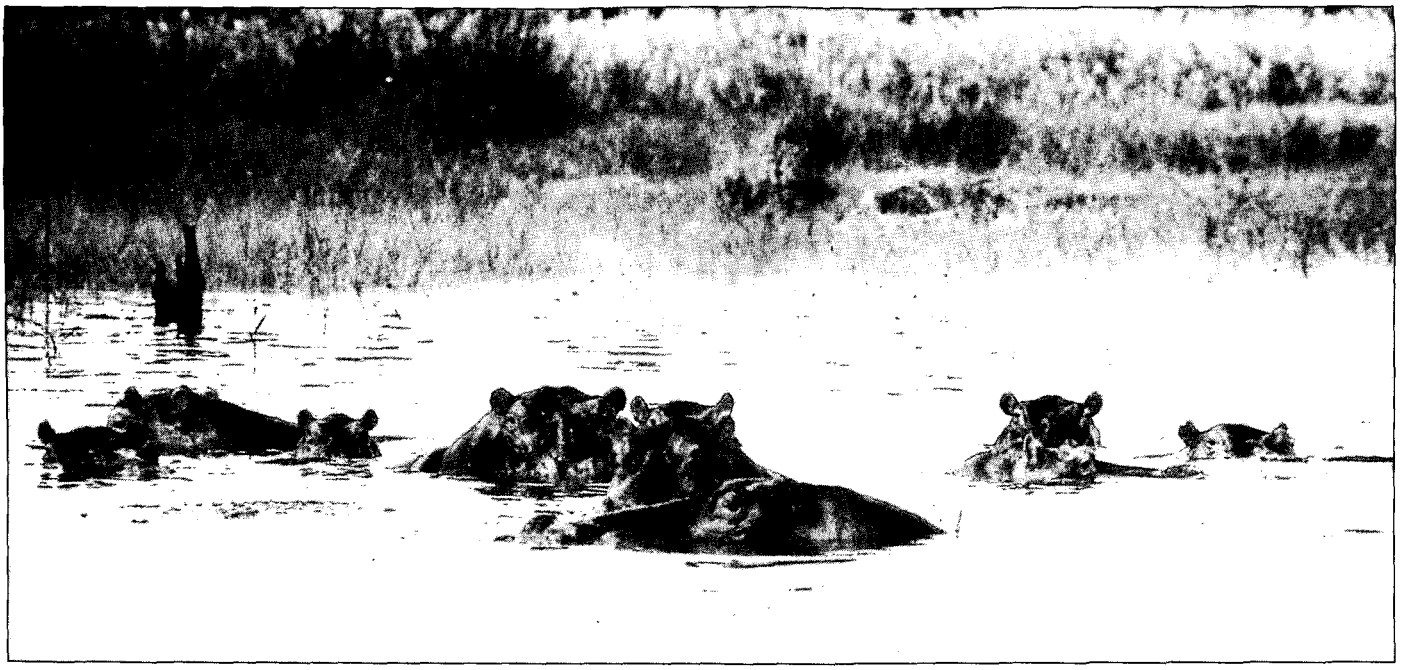
ALTHOUGH PRIVATE SOLUTIONS TO WILDLIFE CONSERVATION have had dramatic results, their promise and application in post-colonial Southern Africa is limited by the political power and cultural dominance of communal lands. First, communal lands are the enduring legacy of traditional tribal land tenure; the overwhelming majority of black Africans live and farm on them, and the prospect of changing that reality is slim. Second, communal lands were excluded from the wildlife reforms granted to the private sector; such lands remained open-access commons under state dominion, subject to the full gamut of national laws that have made wildlife more a burden than a benefit to rural Africans. Third, communal lands are generally the most marginal and least productive lands for agriculture and, for that reason, among the most important lands for wildlife. Fourth, communal lands frequently surround park lands and protected areas; together, the two land systems form vital ecological units in which much of the biological richness and diversity of Southern Africa resides.

African conservationists harbor no illusions about private lands. They have understood all along that saving the region's wildlife could not be done on private lands alone; communal lands would have to be included in the strategy—a strategy that, for both cultural and political reasons, could not entail broad-based privatization. Moreover, they have known that any strategy to conserve wildlife on communal lands would have to have a compelling and enticing economic component. Unless conservation could be linked to economic development, it would have no more value to peasant farmers than a marauding elephant declared off-limits by the state.

The problem they faced was complex: How could nonsustainable open access to wildlife be curtailed and individual incentives for wildlife conservation be created while communal ownership of land and communal harvest of wildlife was promoted and encouraged? One answer, advanced by Garret Hardin in his seminal essay, "The Tragedy of the Commons," is that the problem as stated is unsolvable: Individuals tend to consume as much of the common resource as possible, without preserving it for future use, because they get all the benefits and bear only some of the costs. Over time, this incentive to overconsume leads to permanently depleting land or killing off wildlife.

By all appearances, those conditions held sway on the communal lands of Southern Africa. Harvest of key game species, from elephants to rhinos to buffalo, exceeded birth rates, and the benefits of slaughtering them made the prospect of their impending demise, and the bonanza of their free meat, skins, horns, and ivory, net gains for a rural people plagued by the ever-present reality of hunger, disease, and death. Yet appearances can be deceiving, for what made the "wildlife commons" tragic was not its lot as common property but rather its open-access status, created by the state's usurpation of village rights to wildlife and its eclipse of tribal institutions that had once governed the harvest of big game. That this would happen is partially explained in the writings of F. Berkes, Daniel Bromley, and Elinor Ostrom—scholars who have seen that communal institutions can govern common property resources, but only if their power to do so is not corrupted by state intrusion. Southern Africans took this lesson to heart, and in the wildlands of Zimbabwe the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) was born in 1986.

CAMPFIRE, A PROGRAM OF THE ZIMBABWE DEPARTment of National Parks and Wildlife, was designed to improve wildlife conservation on communal lands much the same way wildlife conservation had been improved a decade earlier on private lands by private ownership of wildlife. Its goal was to allocate the rights to use communal resources (especially big game) to small rural communities, which could then sell those rights, mainly in the form of licenses for trophy hunts. The revenue earned—several thousand dollars for a buffalo and many times more for an elephant—would, supporters theorized, give villagers money for local development and strong incentives to protect



The goals of CAMPFIRE and CBNRM are simple: to secure community claims to wildlife and to engage local villagers in the sustainable harvest and economical marketing of wildlife products (primarily hunts)—to benefit, in a word, the very people who must pay, on a daily basis, the conservation price of putting up with less-than-benign wild neighbors.

elephants and other money-earning wildlife. Supporting this presumption was a simple economic reality: Wildlife marketed as intact trophies was many times more valuable than wildlife poached for subsistence meat or divided up for black-market sale.

Communal lands, however, presented a problem; the law did not allow for the transfer of wildlife use rights to villages. As a compromise, the Department of National Parks and Wildlife delegated the appropriate authority to district councils, the legal representatives of CAMPFIRE-participating villages. Though not a perfect solution, district councils generally have given villages autonomy in the running of local wildlife enterprises and in the control of most revenues raised from safari hunting.

Today, CAMPFIRE is more a movement of participating villages, district councils, and collaborating organizations (World Wildlife Fund, the Center for Applied Social Sciences, African Resources Trust, and Zimbabwe Trust) than it is a government monopoly. It is pragmatic rather than ideological, blazing a trail with whatever help it can get, including some $20 million in foreign aid from the United States (all of which has gone to the infrastructure of CAMPFIRE; village revenue comes exclusively from wildlife hunts). As mixed and imperfect as CAMPFIRE is—at least relative to its vision of full village governance of communal wildlife and revenues—it is a seminal movement.

Its significance is suggested by the friends and foes it has attracted. CAMPFIRE's supporters span the gamut of left and right, from the 39-member Congressional Black Caucus to the World Wildlife Fund to an array of libertarian think tanks to the World Conservation Union to the pragmatically Marxist Robert Mugabe, president of Zimbabwe. Its opponents, in contrast, are more narrowly ideological and more inclined to a fervent and unflinching animal rights world view. They include the political and the nonpolitical: passionate legislators, such as Reps. Tom Lantos (D-Calif.) and Christopher Smith (R-N.J.) and Sen. Wayne Allard (R-Colo.), and the even more impassioned Humane Society of the United States.

Those closest to the CAMPFIRE movement describe it in paradoxical terms. Marshall Murphree, former director of the Center for Applied Social Sciences at the University of Zimbabwe, likens the movement to a "khaki shorts ecology brigade" out to save wildlife but inadvertently thrust to the forefront of a "struggle [to save] property rights in rural Africa"—a crusade that he believes has sweeping implications for land and resource reform, local self-governance, and conservation policy throughout Southern Africa. Such views are common among CAMPFIRE activists, who see themselves as a revolutionary breed apart from the run-of-the-mill conservationist.

Brian Child, a former Zimbabwe National Parks scientist, celebrates CAMPFIRE as the offspring of the Western private property rights tradition and the Southern African tradition of small, self-governing communities. It is, he writes, "like the communist system in that it is based on community rather than private ownership, but resembles the capitalist system in that it uses the market to allocate resources."

CAMPFIRE's melding of wildlife property rights with the rule of autonomous, small-scale communities explains its broad ideological appeal to libertarians, conservation biologists, and leftists—and, in turn, its rejection by animal rightists and statist U.S. politicians. In essence, what proponents of CAMPFIRE admire most about it is its fair and common-sense conservation ethic: Those who bear the costs of conservation should also reap its benefits. Applied to rural, African communal lands, CAMPFIRE and its community-based natural resource management (CBNRM) cousins in South Africa, Namibia, Botswana, Malawi,

Mozambique, and Zambia stand for the same wildlife reform principles applied earlier to white landowners, but now adapted to the culture and custom of the peasant farmer.

THE GOALS OF CAMPFIRE AND CBNRM ARE SIMPLE: TO secure community claims to wildlife and to engage local villagers in the sustainable harvest and economical marketing of wildlife products (primarily hunts)—to benefit, in a word, the very people who must pay, on a daily basis, the conservation price of putting up with less-than-benign wild neighbors. The programs work by devolving property rights in wildlife from the state to the lowest possible level, by making clusters of villages the focal point of communal self-governance and by making the body of villagers who can comfortably assemble in the shade of a meeting tree the arbiters of democracy and the marketers of safaris. So far, the results—especially those from CAMPFIRE—suggest a degree of success comparable to that attained earlier on private lands in Namibia and Zimbabwe.

First, CAMPFIRE is earning cash for local people—around $2 million a year—through community-contracted safari hunts of elephants and other popular game animals. It's a pittance by American standards, but for rural peasants whose annual income amounts to a few hundred dollars, it's substantial. For example, the 149 heads of household who make up the village of Chikwarakwara met in the shade of a "meeting tree" to debate what to do with their CAMPFIRE wildlife revenue. After a long and considered discussion, they decided to divide the revenue—just under $100 per household—between community projects and individual household payments. Later, in a formal community ceremony, each household head publicly received his total wildlife dividend. Then each of them took turns depositing his agreed-upon share for community projects into two community pots, one designated for the local school and the other designated for a community grinding mill.

Second, CAMPFIRE communities are learning how to use the global market to their advantage. In 1991, the Chipinge district council had four elephants and several smaller animals to auction off to safari companies for trophy hunting. Lacking any prior experience in marketing, the district was able to sell the package for only $26,000. A year later, and a year wiser in the ways of the competitive market, it sold the same package for $68,515.

Third, CAMPFIRE is changing rural attitudes toward wildlife. In Hwange district, poaching stopped almost immediately after CAMPFIRE revenues were distributed to local residents. Elsewhere, poaching is declining. Before CAMPFIRE, about 50 bull elephants were hunted as trophies and 200 to 300 were shot annually to protect human lives and crops. Now that elephants have economic value to villagers, fewer than 30 are shot each year as problem animals; they are worth too much to be squandered for the sake of saving a hectare or two of maize. And although the killing of elephants in trophy hunting has almost doubled, the total elephant kill has fallen to 120. Fewer elephants now die at human hands, and those that do die enrich rather than impoverish the rural farmers who, with increasing enthusiasm, share the African landscape with mammals of sometimes Jurassic proportions. As a result, elephant numbers are on the increase in Southern Africa, soaring in Zimbabwe to 66,000 from 46,000 in the span of the CAMPFIRE years.

Other benefits can be traced to CAMPFIRE. Habits that indirectly harm wildlife—such as forest denudation, overgrazing by cattle, and human-set fires—are being battled by the same people who once practiced them. Now that wildlife has a high and marketable value, old practices are giving way to more profitable ones. In the community of Masoka, villagers are effecting a revolution in natural resource use and management. Prior to 1990, the resources of Masoka were open-access and heavily exploited. After 1990, Masoka village set up strict rules to govern resource use on its communal lands. Able at last to make wildlife pay, and pay more than cattle, the farmers of Masoka decided to remove their domestic stock and devote their labor to raising elephants and cape buffalo. In the words of one community member, "buffalo are our cattle."

CAMPFIRE HAS ECONOMIC, SOCIAL, AND POLITICAL flaws that even its staunchest advocates concede. Legal authority for community possession and exercise of wildlife rights is weak; by law, formal control of communal resources and derivative revenues lies in the hands of district councils—creations of the state, not of local villages. CAMPFIRE works best where those councils have voluntarily stepped aside in favor of democracy under a tree, letting villages reap the maximum benefits of wildlife use. Proponents of CAMPFIRE, such as Murphree and Child, understand this and are anxious to complete the full devolution of property rights from the state to self-governing village bodies. They know that the prospects for CAMPFIRE will be brighter as the state recedes and vanishes.

There are other problems. Lacking well-defined and fully enforceable communal property rights, many CAMPFIRE communities are plagued by newly arrived settlers who wish to share in the wealth of their common lands and the bounty of their communal revenues. Some communities have found ways around the deficiency of their rights, such as fencing their lands to stop the spread of hoof-and-mouth disease—a tactic that also effectively stops the invasion of squatters. Other communities are less fortunate and are still struggling with the open-access legacy of their communal lands. CAMPFIRE may unfairly raise hopes that wildlife revenues are an economic panacea. Some rural villages will benefit, but many will not; they lack the land base to sustain a wildlife industry. That is OK so long as the true beneficiaries of CAMPFIRE are kept in mind: the embattled wildlife of Southern Africa and the villagers won over to their conservation by the compelling incentive of hard cash. CAMPFIRE has yet to extend its program and its rights paradigm to other natural resources, such as caterpillars and termites (popular, protein-rich foods in rural villages), fish, firewood, and thatch and reed grasses (for roof and fence construction). Finally, the CAMPFIRE program has been heavily subsidized by foreign aid missions, including USAID. If the program is to be sustainable, it must stand on its own feet.

The evidence indicates that CAMPFIRE can be sustainable, especially if nations such as the United States refrain from using their domestic endangered species acts and the global Con-

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vention on International Trade in Endangered Species of Wild Fauna and Flora to block or impede the marketing of community-owned and harvested wildlife products. This may be easier said than done, however. In June at the CITES conference in Harare, Zimbabwe, the United States took the lead in opposing the limited resumption of the ivory trade in Botswana, Namibia, and Zimbabwe. Successful at first on an open ballot, the United States later failed on a second, secret ballot—a vote that was, to the relief of a majority of CITES's 136 member nations, beyond the pale of America's righteous and intimidating scrutiny.

Politics of bullying aside, the fact is Southern Africans made a better case. They pointed out in persuasive logic the opportunity costs to both humans and elephants should the ban be continued. Over a third of the 33 metric tons of stockpiled ivory in Zimbabwe, for example, is from communal areas, and sale of that ivory (not to mention elephant skins) could double village revenues, giving incentives to farmers to free up more communal land for habitat-challenged elephants and putting CAMPFIRE on more solid fiscal footing. They also reminded CITES delegates that elephants were thriving under their care; indeed, thriving so well that in Zimbabwe their numbers now exceed the land's carrying capacity by almost 50 percent. Having stewarded their elephants even to excess, Southern Africans argued that it would be wrong to further punish them with a CITES trade embargo for what, in effect, was the failure of other nations to protect their elephants through creative programs like CAMPFIRE.

Support for the Southern African position came from an unexpected quarter. TRAFFIC, a global environmental network that tracks unlawful trade in animal parts, had recently concluded in a report sponsored by the World Conservation Union, the Species Survival Commission, the World Wildlife Fund, and the U.S. Fish and Wildlife Service that the CITES ban on ivory trade was not living up to expectations. The ivory trade had not stopped, and the rate of elephant poaching, after a brief fall in the early '90s, was now on the upswing. Moreover, the ban had done nothing to stem the greatest threat to elephants: the loss of habitat worldwide to a growing human population. In contrast, the one thing that had worked to stop poaching and the loss of habitat was the marketization of elephants through CAMPFIRE and related CBNRM programs. Nonetheless, animal rights groups, led by the Humane Society of the United States, are at this moment lobbying the U.S. government to use its Endangered Species Act and its clout as a CITES signatory to outlaw even trophy hunting of elephants. If that happens, elephants will bear the cost of renewed farmer hostility, and CAMPFIRE and other CBNRM efforts will wither and die, having lost their main source of natural resource revenues: Trophy hunting—the majority of it by U.S. citizens—accounts for 90 percent of CAMPFIRE income, and of that 64 percent comes from elephants.

DESPITE SUCH INTERNAL AND EXTERNAL THREATS, CAMPFIRE has ignited a movement that now encompasses all of Southern Africa. In Botswana, 150 controlled hunting areas have been carved out of the bush, and rights to wildlife resources have been

granted to both commercial and community operators. One hunting area, bordering the Chobe National Park, is controlled by five villages that constitute the Chobe Enclave Conservation Trust. Its revenues from wildlife have risen from $12,000 in 1993 to $100,000 in 1996.

Zambia's CBNRM program, tagged ADMADE, has likewise followed the CAMPFIRE lead by vesting in both commercial and communal groups the right to harvest and benefit from wildlife in established game management areas. The Sandwe game management area, for example, was typical of many communal areas at the start of the program; wildlife was depleted and hunting companies were not interested in developing safari opportunities. Yet when the local community agreed to forgo poaching in exchange for marketable hunting rights, Sandwe's bleak picture brightened. Within four years trophy-quality animals had increased sufficiently to draw a paying safari operator, and by 1994 the community had earned its first check of $6,401.

My own interest in CBNRM lies in Malawi, at Vwaza Marsh Wildlife Reserve. It is a small park, one that is eclipsed by the prestige of CAMPFIRE and overshadowed by the sheer bulk and diversity of wildlife in Zambia, Botswana, Namibia, and South Africa. Nonetheless, it is a special place because of what it could mean for the next step in community-based conservation.

Vwaza Marsh is a partial misnomer. Most of its land is well drained; only in the north are there extensive marsh lands, many of which dry up during the prolonged winter dry season. Vwaza Marsh is isolated. Its western border lies along the Zambian frontier, a zone of massive, unpopulated forest reserves maintained by the Zambian government. On the north, east, and south edges of Vwaza Marsh, about 6,000 farmers eke out a living growing maize and tobacco (thanks largely to USAID dollars that promote tobacco culture). Vwaza Marsh is not rich in wildlife; besides a handful of lions, zebras, kudu, hippos, and sable, its principal big game occupants are 300 elephants and a modest herd of cape buffalo.

The problem at Vwaza Marsh is that the people who live along its periphery are land starved and prudently terrified of elephants and buffalo. This has had two consequences. One, elephants and buffalo are being poached to extinction. Two, the people who live near Vwaza Marsh are petitioning the national government to open up its arable lands for single-family homesteads. Privatization of public resources is an attractive idea, but in the case of Vwaza Marsh it is neither ecologically prudent nor economically sound. Instead, a different and more promising solution is being advanced by a small band of community-based conservation enthusiasts, including me.

We want to save elephants and cape buffalo, and we hope to do so by creating use rights to Vwaza Marsh's modest bounty of natural resources and by allocating those rights to the villages nearest the reserve and most able to defend its land and wildlife. Our conservation scenario includes more than just elephants and buffalo (the only game in large enough numbers to be harvested); it also embraces medicinal plants, caterpillars, termites, fish, thatch and reed grasses, and a litany of minor resources. As with CAMPFIRE, we want small clusters of villages to take possession of those rights, distribute them among households—the basic unit of rural African life—and reap the benefits that come with the use and conservation of owned resources.

What is unusual about Vwaza Marsh, and what explains my affection for it, is that it is the first park in Southern Africa to have full-scale community-based conservation practiced *within* its borders and the first to have rights to its resources assigned to someone other than the state. In this regard, Vwaza Marsh is a departure from the CAMPFIRE model; in the latter, use rights are restricted to communal lands, while in the former they extend to protected lands such as parks and wildlife reserves. Nonetheless, the program's goals and objectives are roughly the same as those of its Zimbabwean cousin: to conserve wildlife and habitat through robust economic incentives.

Ideally, use rights to Vwaza Marsh's plant and animal resources—resources that can be used for subsistence living or marketed regionally or globally for the highest return—will give local residents second thoughts about subdividing the park into small farming plots and cause them to rethink the economy of poaching. (A poached elephant is worth about $500 in meat and ivory, while a lawfully marketed trophy elephant is worth as much as $20,000.) But the greater importance of Vwaza Marsh transcends the conservation dividend of saving a few elephants and buffalo.

Malawi is, in many ways, the future face of Southern Africa, with a burgeoning population pushing inexorably against the last holdouts of uncultivated land within parks and reserves. The future of those protected areas—the biological seeds, so to speak, of the region's emerging wildlife industry—will depend on winning popular support for their continued existence. Clearly, if they are to exist, they must have value to rural Africans, not just value for eco-tourists. Without such value they will be treated precisely as wildlife has been treated in the past: poached on, depleted, and possibly eliminated. Creating that value is the challenge for CAMPFIRE's successors.

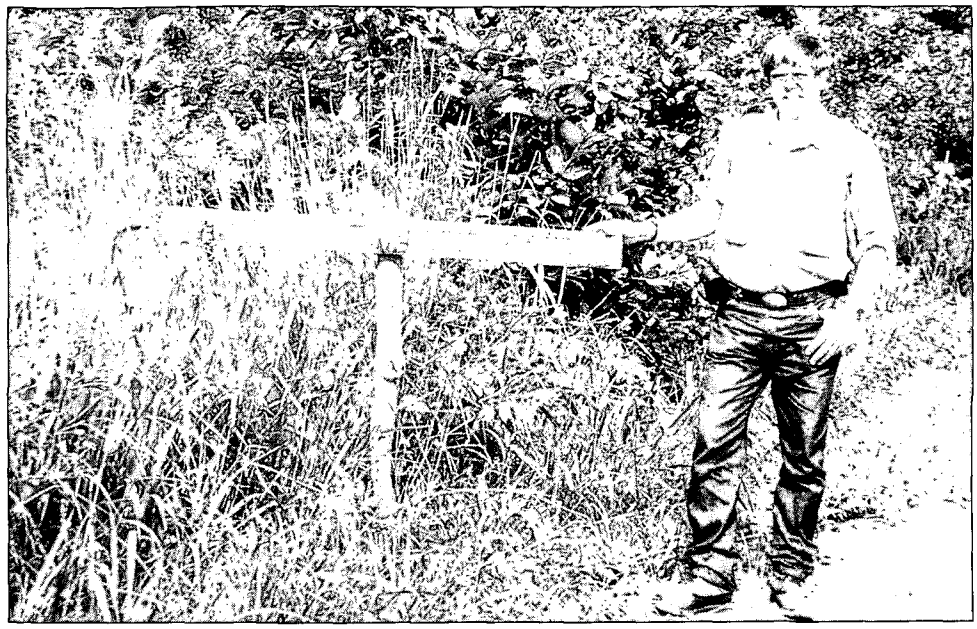
Of course, the long-term prospects of Southern Africa's wildlife may well depend on developments external to CAMPFIRE and CBNRM, such as broad-based industrialization to lighten the human pressure on wildlife habitat. For the time being, though, community-based conservation is the thumb in the dike. It is the most equitable, the most politically desirable, and the most socially promising alternative to the Western legacy of state prescription. It is the hope and the vision of the greener hills of Africa.

COMMUNITY-BASED CONSERVATION CAN ALSO BE MUCH more than the thumb in the dike; it can be a partial template upon which we green the hills, the valleys, and the plains of America. It is clear, I believe, how the earliest phases of wildlife policy reform in Southern Africa can apply to the United States: Robust, enforceable, and marketable rights in domestic wildlife would go a long way toward resolving such emotionally laden issues as livestock on public lands and endangered species on private property. Why not let public land ranchers have the market option of growing either livestock or wildlife, or some combination of the two? Given the proven profitability of game ranching in Texas and fee hunting of wild elk on the private lands

of the Deseret Ranch in northeastern Utah (where elk outscore cattle in net revenue), I have a hunch many ranchers would embrace the wildlife bonanza.

Likewise, why not let property owners benefit from endangered species rather than just bearing the enormous cost of preserving them for the enjoyment of everyone else? And so far as I know, a privately radio-tagged and trackable wolf that earns a property owner $10,000 a year in photo opportunities is genetically the same as a public wolf that drives an angered rancher to shoot, shovel, and shut up.

What is less clear, I suspect, is what relevance, if any, the communal aspect of African wildlife reform has for a society built on individual initiative and private property. Despite our individualistic flair, Americans are extremely social animals; they settled this country and peopled its frontiers not in isolation but in community and association. That communal tradition—the one that Alexis de Tocqueville celebrated in *Democracy in America*—is alive today in suburbs where families are joining together to form self-governing, gated communities and in the nation's rural heartland, where organizations such as the Sand County Foundation are melding disparate private lands into voluntary associations of cooperative wildlife management. By whatever name they are called, they are solidly in the civic and associational tradition that has been America's hallmark from the first raucous New England town meeting to the first cooperative water district set up by Utah Mormons to the first self-governing commons established by Montana ranchers in the early 1900s.



The author in Malawi, standing by a sign stating that "Elephants Have the Right of Way." Animal rights groups, led by the Humane Society of the United States, are at this moment lobbying the U.S. government to use its Endangered Species Act and its clout as a CITES signatory to outlaw even trophy hunting of elephants. If that happens, elephants will bear the cost of renewed farmer hostility, and CAMPFIRE and other CBNRM efforts will wither and die.

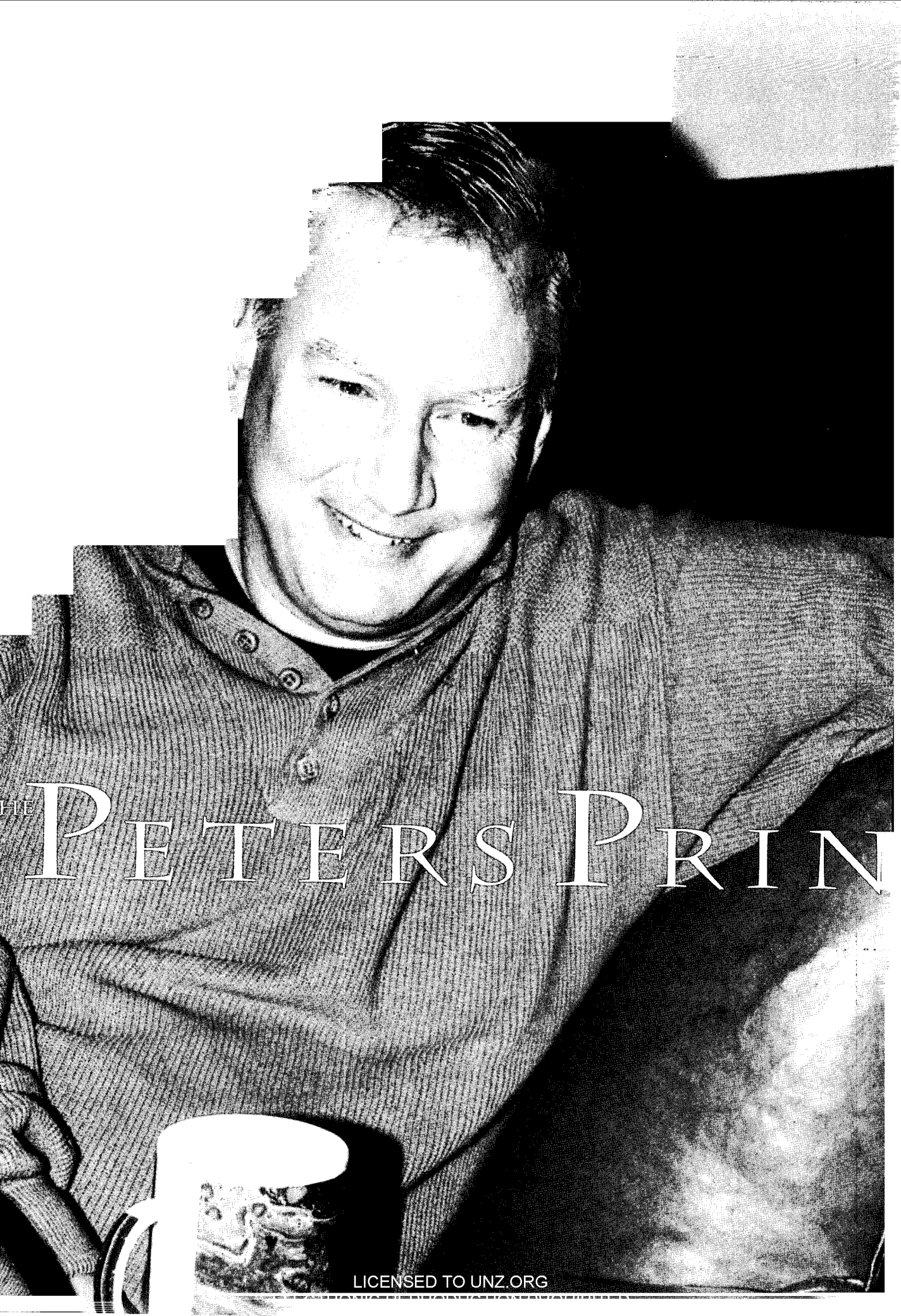
Today, the African model of communal rights can be applied to a wide range of American environmental issues. Many of our resources will not be best served by classic privatization, whether because of political barriers or the existence of more desirable options. Our public lands and national forests, our national parks, our vast scenic expanses, and our rich bounty of wildlife are prized assets that by virtue of their political sensitivity, their cultural symbolism, and their often fugitive nature are best dealt with through community-based rather than private solutions.

There is no reason, for example, why local councils made up of forest and range users of all stripes and geographies could not take over control and management of our federal estate and oversee the marketization of federal resource use rights. There is no reason why conservation trusts elected by membership associations of paying national park visitors could not assume custody of our crown jewels. There is no reason why communities could not develop collective yet voluntary strategies to protect the open-access resource of scenery, much as Randal O'Toole's Thoreau Institute has described for Wallowa County, Oregon. It's akin to zoning, but in the context I imagine it is much closer to democracy under a baobab tree. And there is no reason why large landowners could not form cooperative conservancies to provide adequate habitat for far-roaming wildlife, or why small communities could not band together to exercise common rule over local wildlife by their own means and true to their own visions.

Already, voluntary watershed management groups are springing up across the width and breadth of America to manage complex and highly interconnected landscapes. They are sculpting neighborly solutions to resource conflicts and building new institutions, all voluntary, for the management of what heretofore have been open-access resources. Logging companies in the deep South, such as International Paper, are leasing millions of acres of prime deer habitat in commercial timberland to the collective rule of thousands of hunter associations. And in the Bitterroot mountain range of western Montana and northern Idaho, ranchers, loggers, and environmentalists are communally conspiring to save the grizzly bear.

The lessons of community-based conservation echo from the savannahs and veld of Southern Africa to the very heart of America. It would be our loss, not just Africa's, if the flame of CAMPFIRE were dampened because the best our nation had to offer elephants was a ban on ivory and a proscription on trophy hunting. The flame must be quickened. At stake is the transportable dream of a khaki-shorts ecology brigade for a greener and freer world. ◆

Karl Hess Jr. (khess4@aol.com) is a senior associate at the Thoreau Institute.



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The management guru as playground director, provocateur, and passionate defender of open societies.

CIPLES

Interviewed by Virginia I. Postrel

Tom Peters dots his articles with exclamation points, ellipses, and WORDS IN ALL CAPS. He tends toward sweeping, barely supported statements ("Women are smarter than men," he generalized in *Forbes ASAP*) and uses the word *revolution* a lot. His official bio describes him as a "gadfly, curmudgeon, champion of bold failures, prince of *dis*order, maestro of zest, professional loudmouth (as a speaker he's 'a spitter,' according to the cartoon strip *Dilbert*), corporate cheerleader, lover of markets, capitalist pig...and card-carrying member of the ACLU."

It's all designed to get attention—for Peters and for his ideas—and it works. He is the best-selling business author in history and travels the world giving extremely lucrative seminars to corporate executives eager to be provoked and inspired. His 1982 mega-bestseller, *In Search of Excellence*, co-authored with Robert Waterman, launched a whole new genre of business books and created the modern business guru.

But there is more to Peters than the hype-meister and "spitter." In person, he qualifies his generalizations with "to be sure" background, and his books are grounded in a solid knowledge of business practice and theory. He sprinkles philosophical phrases (Karl Popper's "conjectures and refutations" is a favorite) and the ideas behind them in with the anecdotes, salesmanship, and (you've been warned—do not send us letters to the editor complaining about this) profanity. As befits a Stanford Ph.D. (in decision science and organizational behavior), he is well read in the scholarly literature, as comfortable citing UCLA strategy professor Richard Rumelt's seminal-but-esoteric work on diversification or F.A. Hayek's idea of the extended order as he is touting the latest pop business book.

As his bio suggests, Peters is also politically confusing—at least to those used to traditional left-right distinctions. An article last fall in *Lingua Franca*, a magazine aimed at professors, reported U.C.-Santa Barbara English professor Christopher Newfield's proposal "to instigate social change with an unlikely coalition: the middle managers who read Tom Peters, together with postmodern English professors, fighting side by side to make the world safe for radical democracy." The coalition might work, but not in the leftist way Newfield imagines. (Newfield admits some worries about Peters's devotion to Hayek's *The Fatal Conceit.)* The literary theorists would have to learn to love the market. True, Peters's work overturns Organization Man assumptions and emphasizes flexibility, flux, and diversity. But free markets are part of the same dynamic picture. Those postmodern virtues are, it turns out, pretty much what the Hayekian market looks like: "The corporation...as we knew/know it...is dead!" writes Peters in characteristic style. "The market as Hayek knew it and loved it is alive, well, getting better and hopelessly inexplicable! Long live...God knows what! Playground directors united! Ready. Fire. Aim."

REASON Editor Virginia Postrel interviewed Peters at his Palo Alto office in May and in a follow-up phone conversation from his Vermont farm in July.

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Reason: You have a tendency in your public life to state things very sweepingly, so you are criticized for hype and a whiff of charlatanism.

Tom Peters: Absolutely. It's called sales. I have a great deal of difficulty, though I'm well trained academically, not being passionate about things. My problem is not that I see all 17 sides of any issue, but I'm equally passionate about all 17 sides simultaneously.

I think economics is about passion. Economic progress, whether it is a two-person coffee shop or whether it is Netscape, is about people with brave ideas. Because it is brave to mortgage the house when you've got two kids to start a coffee shop.

And business is about people. It's about passion. It's about bold ideas, bold small ideas or bold large ideas.

My entire adult professional life is one big effort to exorcise the demon of Robert McNamara. You know, I went to Vietnam. I was not a war protester. I went to Vietnam twice, not once. But McNamara was the closest we've had to a serious, statist planner in this country. And he got away with it three times—once at Ford, once at the Department of Defense, and once with the World Bank. And my passion is the destruction of everything that McNamara stood for. My life is a passionate statement against statism—statism in the corporation, as opposed to in the nation, if you will. So that's a piece of it.

Another piece of it is that, in a world that is overloaded with information, I attempt to provoke. A classic example of that: Two days ago I was in Orlando speaking to the annual convention of the International Mass Retailers Association. The chief operating officer of Wal-Mart was there, and the Circuit City people, and so on. I said, "In the last 25 years you in this room have created a genuine revolution: the Staples revolution, the Blockbuster revolution, the Home Depot revolution, the Wal-Mart revolution. I presume you are reasonably intelligent. Why are you sitting here complacently, not realizing that, though none of us realizes what it's going to be, there will be another revolution? Do you think the next 25 years are going to be more mellow than the last 25 years?" I said: "There's not a soul in this room who is behaving in a revolutionary fashion. You're all history."

And Don Soderquist, who is the COO at Wal-Mart, came up to me afterwards. He said, "That was great. You really pissed me off." And I said, "Right, it was worth the trip to Orlando."

Reason: What about younger, cynical people who say, "This is just a bunch of bull"? Not just you, but what you've started. That's why *Dilbert* is huge.

Peters: Absolutely. The classic backlash. We of *In Search of Excellence* were the backlash to the MBA dogma of the 1960s and '70s. *Dilbert* is the backlash to the management gurus of the last 15 years, starting with *In Search of Excellence.*

That's life. It's called conjectures and refutations. It's very Popperian. Any time anything takes root, it leads to wretched excess. Fine.

Gurudom not only includes total assholes like Tony Robbins and myself, who I hope is only half an asshole, but also the gurus like the Henry Mintzbergs and the Gary Hamels, who are actually quite legitimate but have become gurus in their own right—Mike Porter and so on. The other part of that is the CEO as guru—Lee Iacocca started that. Twenty years ago the average educated American could not have named two chief executive officers in America, with the exception of the one who ran their company.

But I think the Iacocca thing, the Peters and Waterman thing, the Robbins thing, the [Ken] Blanchard thing, and the Hamel-Porter thing is a very specific reaction of a whole lot of people who are confused by all the shit that's going down. When people are confused, they want people on white horses to lead them. Obviously it didn't have to be me and Bob, and Blanchard and [John] Naisbitt and Porter and so on, any more than it had to be Iacocca and Ted Turner. But it had to be.

We are also talking about a boringly garden-variety uniquely American tradition that starts with Ben Franklin. We are the improvers. I heard it best stated on a morning show on television somewhere: The difference between the Americans and the Europeans is all Americans believe that problems have solutions. All Europeans believe that solutions have problems. And it struck me as a brilliant encapsulation. Emerson, Norman Vincent Peale, Dale Carnegie, and Tony Robbins are boringly part of the same stream.

And, you know, Franklin was a phony. All his simplistic prescriptions. Tony Robbins, I knew Ben Franklin, and Tony Robbins, you're no Ben Franklin. And that is true. He's certainly no Emerson either. But, stretching a lot, if Tony Robbins is the Ben Franklin of 1997, then Scott Adams [the creator of *Dilbert*] is the Mark Twain or Will Rogers of 1997, who was doing the same reverse-spin cynical stuff.

Reason: You said that your adult professional life has been an attempt to exorcise the demon of Robert McNamara. What would America or American business look like, pre- and post-exorcism?

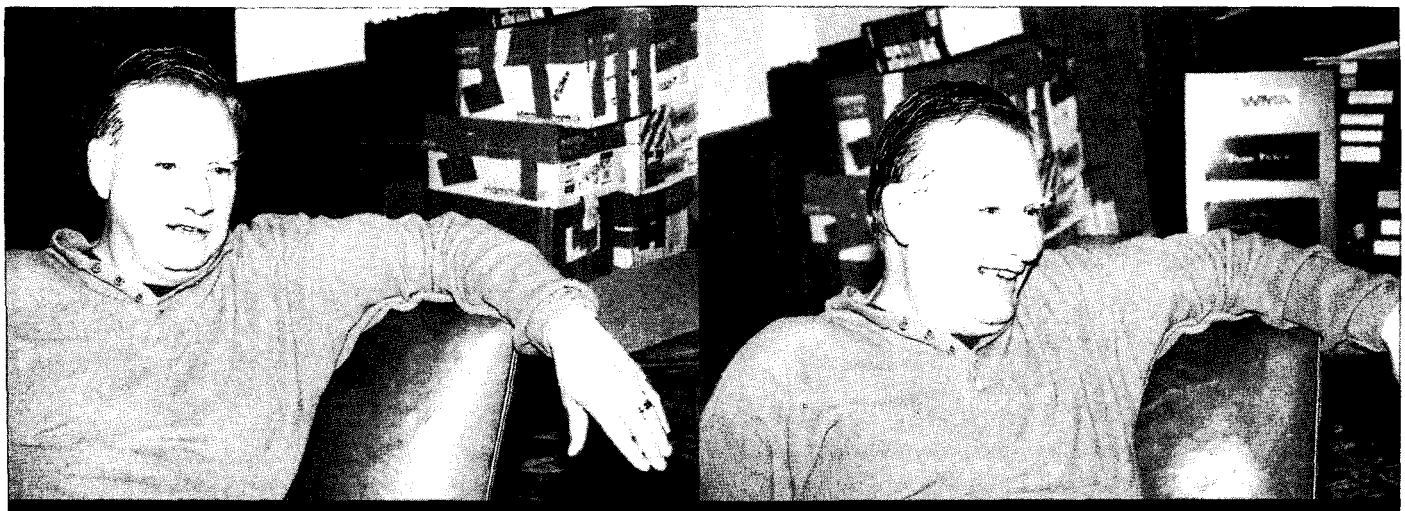
Peters: Neither of us is naive. And I have said this when I am being honest: What McNamara did during World War II, like find out where our planes were, and what he did at Ford, which was find out how many cars we've made, were not silly. We had created these enormous organizations. If you're a good conservative, you can call them hopeless socialist microeconomies in and of themselves—which they were. We didn't know what the hell was going on, and so Tex Thornton and McNamara and Arjay Miller and all that gang of Whiz Kids did fabulously good stuff.

But then that McNamarian logic became essentially the de facto wisdom of the Harvard Business School, which set the pace for large American enterprise. And it set the pace for American enterprise in a very Republican—much more than a Democrat—way from 1950 until Ronald Reagan. It was a ridiculous situation, which was big company Republicanism vs. big labor Democraticism and neither of them worth a shit.

Reason: You wrote a *Forbes ASAP* column about Friedrich Hayek. What do you like about Hayek?

Peters: The spontaneous discovery idea. As I said in *Liberation Management*: The mess is the message. To me that's the joy of Santa Clara County, San Mateo County, and all economies that work, Hong Kong for the next—whatever it is now—15, 45 days.

I am not one of those people who tends to read books multiple times. But [Hayek's 1988 book] *The Fatal Conceit* I find I



"I am not one of those people who tends to read books multiple times. But [Hayek's] *The Fatal Conceit* I find I can read over. I've probably read it, literally cover to cover, word for word, a half dozen times. Every 18 months or so I go back and read it again just to make sure my religion has not slipped in any way, shape, or form."

can read over. I've probably read it, literally cover to cover, word for word, a half dozen times. Every 18 months or so I go back and read it again just to make sure my religion has not slipped in any way, shape, or form.

Reason: How would you describe that "religion"?

Peters: The only way I can describe it is go way back 18,000 years ago to *In Search of Excellence.* That book was organized around eight principles. And number one on the list was something that Bob Waterman and I called "a bias for action." The whole notion of experimentation has always been at the top of my agenda. The economy—as you do see so absolutely vividly in a Silicon Valley or in the street markets of Delhi or Shanghai—is an unplanned experiment. The objective is to get as much shit going as you possibly can. And then, occasionally, out of that pops the 3Coms or the Netscapes of the world, or the Gaps, or the Banana Republics.

Reason: Not one experiment really. It's the....

Peters: It's the density. It is the critical mass. In Silicon Valley, it's the combination of everything from the hippies of Haight Ashbury to the craziness of San Francisco, to the Berkeleys and the Stanfords interacting with the UCSFs and the San Jose States, plus the venture capital folks at 3000 Sandhill Road, and the good weather, and a lot of good bars, and health clubs. And that's the part that's almost impossible to copy. I mean, there's no secret that is safe from a bar in Sunnyvale. And that's a great deal of the secret to success. Despite the fact that we can all assume multiple identities and cross-dress in various chat rooms on the Web, I have some difficulty imagining pure insanity arising on the Web the way I think it does here.

Reason: Pure insanity is a good thing?

Peters: Absolutely. Anybody who is an entrepreneur is a person who essentially has impaired judgment. The odds of success are zilch. This valley is loaded to the gills with a whole lot of totally insane people who honest to God believe that they can be the next Bill Gates or the next [Sun Microsystems CEO] Scott McNealy. And that is genuinely stupid. In the great city of San Francisco, where I used to live, at 2 in the morning every other Victorian [house] has somebody who is writing the great American novel. And the city is not loaded with James Joyces or Virginia Woolfs. But entrepreneurship is about distorted views of reality.

Reason: You emphasize experimentation as trying lots of things, encouraging lots of ideas, but what about the other half of the equation, which is selection?

Peters: A lot of stuff goes on, some of it works. A jillion people send articles to your magazine. You publish some, you choose not to publish others. The same damn thing is true with companies that make it in Silicon Valley, or presumably Chicago or Pittsburgh. The essence of a successful enterprise, or economy, is its failure rate.

Reason: When you talk about corporate management, you talk about it in an anti-planning way. Yet part of the point of corporate management is to select from all the possible things that a company might do. It can't do everything.

Peters: Without any question my favorite management book of the last 10 years is *The Rise and Fall of Strategic Planning* by Henry Mintzberg. He says that a strategic planner should not be a planner. He should be a discoverer who pursues wildflowers in the fields, i.e., interesting ideas sprouting here, there, and everywhere. And then puts fertilizer on them. Essentially, a sensible strategic planner looks for experiments that have already started, and then makes some effort to nurture them.

Fortune did a beautiful piece recently on Cisco Systems. Cisco has an acquisition strategy which has nothing to do with tradi-

tional acquisition strategies. What they are doing is essentially buying bodies at an average of $2 million a head. In the same way, Hewlett-Packard has long been an acquirer. For years they've been buying companies, dozens of companies. But they buy companies with five people in them. That's the Mintzberg theory.

There is a wonderful new book, *The Living Company*, by the former Shell planner Arie de Geus. He talks about tolerant pruning of roses vs. rigid pruning. He says that if you prune your roses rigidly, you may well get the biggest roses this year. But if you prune them tolerantly, you will get roses every year. That's quite a lovely analogy. The fact that everybody said America sucked 10 years ago and now they say we're great is part of that deal. We prune tolerantly, and all kinds of stuff goes on in our economy, which is not necessarily true of a large number of other economies. And out of it over the long haul comes more good stuff than out of any other alternative.

Reason: What makes a business good by your lights?

Peters: When Paul Weaver wrote a review of, I think it was *Thriving On Chaos* years ago in *The Wall Street Journal*, he said: What Tom says is that the good thing is also the most profitable thing, i.e., innovate like a son-of-a-bitch, serve your customers incredibly well, treat your employees like decent human beings and da, da, da—Milton Friedman rides to the rescue—you maximize profits. And so it turns out that a lot of stuff I was talking about in a very apolitical way is good—maybe even uppercase *L*—liberal stuff and makes very good lower-case *c* conservative profit-maximization logic. The open society to me is a term that can arguably be applied as effectively to an enterprise as it can be to a nation.

Reason: How would you describe yourself politically?

Peters: Several ways. The reality is big countries are going to have big governments. But I have fallen in love over the last 15 or 20 years with gridlock. I don't give a damn whether it's a Democrat in the White House and a Republican-controlled Congress, or a Republican in the White House and a Democrat-controlled Congress. When Washington is fucked up, it doesn't do anything much. And that's the best of all possible worlds.

My politics is totally screwed up. I have sometimes described myself as having economic views that are far to the right of Jack Kemp, and social views that are to the left of Jesse Jackson. Which makes me sort of a libertarian, kinda, in a way. But I am not a libertarian, because I don't see how you can be a pure libertarian. I have much too pessimistic a view of humanity to believe that—I do believe that humanity fundamentally sucks. That people do phenomenally shitty things to each other in the absence of any control whatsoever.

Reason: So you really mean an anarchist when you say libertarian? Hayek was a libertarian.

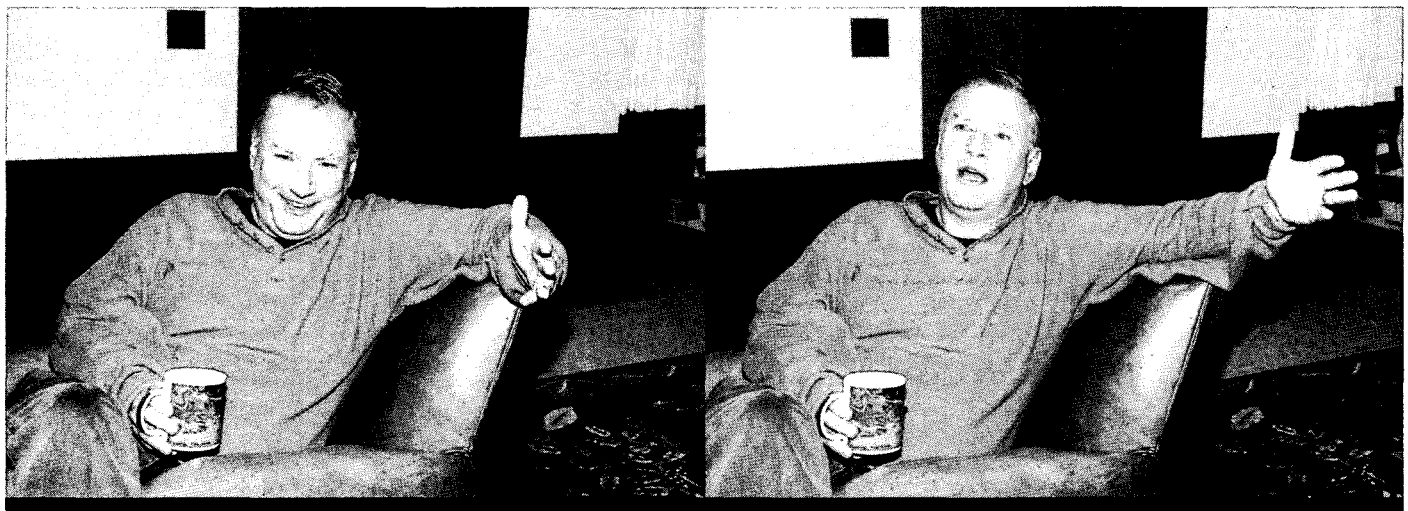
Peters: I've never studied libertarianism. I know the only time I come close to studying it is when I get my California ballots and read the Libertarian Party position on any given proposition. And it is anarchist basically. It says you must get rid of all this stuff. And unfortunately I don't have that positive a view of humanity.

Reason: In its political manifestations libertarianism, as with the L.P., sounds utopian. In its intellectual manifestations, if you actually read the seminal figures, it's very anti-utopian. Hayek is no utopian.

Peters: No utopian, to put it mildly.

Reason: What do you mean by your social views are to the left of Jesse Jackson?

Peters: Rich [Karlgaard, editor of *Forbes ASAP*] did me, I felt, a disservice in the first piece he ever did on me in *Forbes ASAP*. He described me as being very pro-market but also a major donor to the ACLU. Which of course is technically correct, but



"Anybody who is an entrepreneur is a person who essentially has impaired judgment. The odds of success are zilch. This valley is loaded to the gills with a whole lot of totally insane people who honest to God believe that they can be the next Bill Gates or the next [Sun Microsystems CEO] Scott McNealy. And that is genuinely stupid."

the donation happens to be—and I think the record still holds today—the largest single donation ever given to the ACLU totally oriented toward First Amendment rights protection. I sincerely believe that Hayek should have added free speech to his list of the big three, along with contracts, property rights, and so on. Though he would argue obviously that these somewhat go hand and glove.

I do not support the old Republican Party, which I grew up with—the [Sen.] Mac Mathiases of Maryland and so on, who essentially were completely captives of big corporate America. I am attracted to the fact that the new Republican Party is small businessish in orientation. But if Ralph Reed and his heirs and assigns cease to exist tomorrow, my life would not be the worse for it. The subtle control of the Moral Majority in the school boards of America makes me want to puke.

I just find it so ironic that the Republican Party of Ronald Reagan and Newt Gingrich is essentially a captive of a very statist view of moral controls, which is antithetical to the freedoms I believe in. [Technology writer] George Gilder believes a woman's place is in the home. But he's totally in favor of entrepreneurship. I mean, give me a break.

Reason: There are some signs that Silicon Valley may be going political again, and the last time this happened was....

Peters: When Bob Noyce [a founder of both Fairchild Semiconductor and Intel] got religion and decided that Washington was where it was at for semiconductor manufacturing. I remember that very well. There was a five- or six-year period when the semiconductor association was far to the left of the farm lobbies. And it was just total madness. The good news is they failed. Only Laura Tyson [later chair of the president's Council of Economic Advisers] believed that they had a good case.

Reason: So you agree that something is going on. I'm wondering whether it's going to be any more intelligent than the last go-round.

Peters: Oh no. The obviously long-term answer is that Silicon Valley is the new Pittsburgh and Detroit, and it's the law of economics that once you've arrived, you attempt to achieve monopoly status. Now that we have arrived, if you will, we will undoubtedly try our level-headed best to screw it up.

Reason: It does worry me, this flirtation with Al Gore. I don't know what you think of Al Gore, but....

Peters: I want to love him because he's a dear. I mean, every family should have a teddy bear. I'm not really sure he's that smart. It's a horrible thing to say and I would hate to see it in print and maybe I will, but that's life.

Reason: I always want to shake the people in Silicon Valley who like him, because he was one of the first people to be a government patron of Jeremy Rifkin, and in many cases the only person. He wrote a glowing blurb for *Algeny*. Somebody who latches onto that is not a friend of technological innovation.

Peters: Here's where I would argue my pragmatic, middle-of-the-road view: Reagan was pro-entrepreneurship, Bush was *classic* old Republican, pro–big business, and Bush really snubbed Silicon Valley. John Young [then CEO of Hewlett-Packard, who endorsed Clinton in 1992] is as good a Republican as you will find. And you have to really work hard to piss off John Young, because John is not piss off-able. I think Bush really did the Kennebunkport, Eastern establishment, fuck California, fuck Silicon Valley, who are these people, routine. So I'm sympathetic to the 1992 embrace that the Valley gave to Clinton and Gore. It's good old-fashioned Psychology 101 as opposed to Economics 101: If you tell me I'm irrelevant long enough I'm going to eventually lash out at you. Clinton and Gore, for all of their misguided bits and pieces, embraced the California ethos.

Reason: It's not clear that the Republican Party has gotten terribly much smarter about it.

Peters: Newt is still the classic Laundromat small business person. It's a huge problem. All the jobs are *not* created by small businesses—all the jobs are created by a small number of small businesses that become growth companies. We have this terrible bifurcation between big business Republicanism or Democraticism and small business Republicanism, and it still doesn't have anything to do with how the economy works. I adore the people who have the nerve to start Laundromats, too, but the truth of the matter is, they're not the engines of the economy.

Reason: Although an economy in which the idea of starting your own company is celebrated will produce both Laundromats and Silicon Valley.

Peters: You're absolutely, unequivocally, 100 percent with no rounding error right. That is completely true culturally, but they don't create the goddamn jobs. The real key to me is whatever the hell it takes to have more venture capitalists than anybody else, who pour the money into the businesses that have made it past the first two years that actually have some serious promise, because that's where the goddamn jobs come from.

Reason: Let me bounce some quotes off you. The first is from Joel Mokyr, an economic historian at Northwestern. He writes about resistance to technological change: "The history of technological progress is the history of an endangered and much resisted species." He goes through several reasons for this. But one of them is, he says: "For the producers themselves life in a technologically creative world may be quite different from life in a static economy. It is one thing to resist a once-and-for-all change in technology, quite another to resist living in a hectic and nerve-racking world in which producers have to run to stay in place and constantly spend effort and resources on searching for improvements."

His argument is that eventually even the technologically creative people out of exhaustion go to government to slow things down.

Peters: I think it's true. You turn out to be the needle in the haystack who hits the grand slam home run with the 3Com or Apple or the Hewlett-Packard. You work your ass off for 25 years. Your bank account is either $5 million or $105 million or more than that. And then you become a conservative. Age makes you a conservative. The fact that you deserve it for all that hard work makes you a conservative.

My half-baked reading of history is that we continue to go through these waves of entrepreneurial explosion followed by merger mania and consolidation. Out of that come big sluggish companies that eventually collapse under the weight of what they've created, and are killed off by the next wave of entrepreneurs.

"I call [nostalgia for the 1950s] the 'false-nostalgia-for-shitty-jobs phenomenon': Oh for the halcyon days when I could sit on the 37th floor of the General Motors Tower passing memorandums from the left side of the desk to the right side of the desk for 43 years. It's just total shit."

I remember so clearly Jack Welch's predecessor at G.E.—Reg Jones—was featured as much in *Fortune* as Welch is, for exactly the opposite reasons. Because Jones created a model of Galbraithean management in the 1970s that said: The chairman of a *Fortune* 100 company's place is not in the home or the office; it is in Washington. And it was the model that I grew up with when I was going through Stanford—of business executive as industrial statesman. The wonderful news is that the Japanese, among others, took us out of our misery. And we ended up with a new generation of leaders.

Reason: There's a great nostalgia now in political circles for the 1950s.

Peters: I have a term that I use in my seminars. I call it the "false-nostalgia-for-shitty-jobs phenomenon": Oh for the halcyon days when I could sit on the 37th floor of the General Motors Tower passing memorandums from the left side of the desk to the right side of the desk for 43 years. It's just total shit. It really is. Life was not as glorious as imagined.

Reason: A lot of critics of current economic dynamism say what they're against is the pursuit of economic efficiency at the sacrifice of other values. My sense of it, particularly in your work, is that this is not primarily about efficiency. Efficiency comes along, but you have cultural goals. What you're doing is fostering creativity, openness, learning, diversity, playfulness....

Peters: Life is play. When Hayek says the economy is a discovery process, that means the economy is play. It means [Oracle CEO] Larry Ellison trying to stick his pecker out farther than Bill Gates's—excuse the crude analogy.

Silicon Valley's a playground. That's the beauty of it. It's the most serious part of the economy, and it is silly. It is purely silly. I mean, we have these guys with thick glasses like [current Hewlett-Packard CEO] Lew Platt, but the beauty of the Valley is total maniacs like [Advanced Micro Devices founder Jerry] Sanders and [Cypress Semiconductor CEO] T. J. Rodgers and Ellison....

Reason: T. J. Rodgers will be so upset that you compared him to Jerry Sanders.

Peters: I know, but it's fair, totally fair. My builder in Woodside tells me T. J. Rodgers has special drawers built into his closet to organize all his socks.

Reason: Yes. I've seen his closet. He gives tours when people come to his house.

Peters: He's proud of it! They are both so frigging weird that they don't even know how weird they are. To me it's a compliment to put him in that Sanders league. It's the freaks of Silicon Valley, and he's a freak. And *freak* to me is a good word, not a bad word.

Don't you think that a place like the Valley or Hollywood is home to a shocking degree of immaturity?

Reason: Places like that depend on having both a great deal of individuality and a kind of discipline.

Peters: Play has discipline. You watch a kid playing doing something in sand at the beach, and that is discipline with a capital *D*.

Reason: It has discipline, but it has discipline that's related to the task itself and not to some external ideal of discipline. One of the real problems, I think, is that a lot of intellectuals have learned everything they know about capitalism from Max Weber and his descendants, so all they know is the bourgeois work ethic. They don't appreciate the element of play that drives the discovery process.

Peters: Only Hayek and [historian Fernand] Braudel get it. With all my love for Hayek, I would give Braudel even more credit. Braudel let himself go and described everyday life and the

transactions associated therewith.

Reason: I sent you the *Weekly Standard* article, "Cosmic Capitalists," by David Brooks. He compares efforts to reinvent business along less hierarchical lines to the French Revolution, a sort of hubristic overturning of all that has gone before: "It used to be that this modernist ethos, this desire to be free of history, to leap out into a brave new future flourished only in politics, where it created the disastrous Marxist utopias" and various forms of the arts. "And, now it's the cosmic capitalists." He's talking about you.

Peters: When I read that thing, Virginia, I was of two minds. Obviously, the Gilders, and perhaps the mes of the world, are hopelessly caricaturizable, to coin a phrase that should never be coined. But I took the article mostly to be flattering. I understood that it was meant to be the worst kind of trashing, but I sort of chuckled my way through it because the answer is, hey, that's pretty much what is going on.

Reason: And, yet, you say *The Fatal Conceit* is your favorite book.

Peters: Yep.

Reason: And Hayek spent his life fighting this desire to be free from history, as opposed to progress by trial and error.

Peters: But I think that is semantics. I think that what is happening now [in business] is pure, raw, unmitigated Popperian conjectures and refutations.

I happened to be blessed by being trained by a University of Chicago methodologist, and everything to him was level-of-the-analysis issues, and why it is totally reasonable to be libertarian at a macro level and a Marxist central planner at the micro level. Why it's OK to be Virginia the autocrat running REASON, who is nonetheless writing about a society which lacks, at the macro level, exactly the controls which, at the micro level, allow her to do her job well. But that's all level-of-analysis stuff.

Reason: That's what Brooks got wrong when he said changing from elevators to escalators at Procter & Gamble is like the French Revolution. Well, no, it's not. That would be like saying that starting *The Weekly Standard* to compete with *National Review* is like the French Revolution—why not preserve the status quo?

Peters: Exactly.

Reason: Another thing Brooks says is, "Businessmen used to like to describe themselves as warriors but now artists are the role models of choice." What do you make of the critique?

Peters: It's total bullshit! I mean, would you call Scott McNealy an artist? Not by a long shot. Larry Ellison may well sit on Zen Buddhist rocks, but he is a warrior out of the Rockefeller mold, to put it mildly.

Reason: I thought of Larry Ellison when I read that, because the Japanese model is the samurai, who is an artist and a warrior.

Peters: There is no reason not to encompass both. Steve Jobs is perhaps the most competitive human being I have ever met in my life, and yet I would argue one of the most artistic human beings I have ever met in my life. You can trash the movies all you want, but they do have an artistic component. And yet brutal competition knows no peers when it comes to Hollywood.

The 10 or 12 artists I have known really well all my life are at least as competitive as professional athletes. They may express it in slightly different terms, but you look at the Jackson Pollocks et al., and they are as interested in wall space in the galleries as Joe Montana is in the percentage of completed passes. So the notion that symphonic conducting, or stage play, or pure art, is not a competitive business is real bullshit.

Reason: I also sent you a *Los Angeles Times* column by Gary Chapman, who founded Computer Professionals for Social Responsibility. He's very upset that people are saying that "policy making"—by which he means centrally deciding—is an anachronism and "the only appropriate response is to surrender our desire for control." How do you respond?

Peters: I think you would have to be a total idiot not to realize that Alan Greenspan and the head of the Bundesbank are not as powerful as their predecessors were 50 years ago. But the major Hayekian, Braudelian point was that government really never could do shit and what was fundamental were the transactions in the private sector. That was their point—long before the Internet became a part of our life. So to a large extent things have never been in control.

The Hayekian argument that I love is that more government documents simply continued to exist over time than records of private-sector transactions. So if we pay attention to what we can research in the Harvard library, that's the collections of government documents as opposed to the day-by-day transactions of the General Electrics of the world. There's a lot of truth to that. Economic history has not been the essence of the study of history.

Reason: Many conservatives hate economic and social history. They think it's terrible to study everyday life. They think it's a plot by evil Marxist professors. It's not that I don't think people should study political or intellectual history, but if you want to know what the past was like, recovering the textures of life is critically important.

Peters: That's the key. The best summer I ever spent was about five years ago, when I wanted to sort out in my mind: What the hell went on when the Industrial Revolution came? I went back to as close as I could find to the original sources and read about the real history of how the Springfield Armory came about, and how the Harper's Ferry Armory came about. And it was fabulous stuff!

Reason: How do you see the future of business?

Peters: There's this terrible or wonderful paradox/dichotomy: What it means to be human is not going to dramatically change in the next 50 years probably, but the way we conduct a lot of enterprise will, so the world will be radically different, *radically* different. There are two halves of the brain. There's the logical half and the primitive half. The primitive half hasn't evolved in the last several million years, and the logical half is moving at a jillion miles an hour. I think that will continue to be the warfare.

It is going to be a big wrestling match. It's going to be great fun. That's why my fundamental nature is Popperian and Hayekian. The one thing that I'm sure of is those who are playful will win, or at least they will lose with vigor, which to me means much more than winning in a narrow sense of the word. ◆

The Tin Drum Meets the Tin Badge

How a classic 1979 film suddenly turned into child porn

By Charles Oliver

In 1979, Volker Schlondorf's *The Tin Drum* was co-winner of the Cannes Film Festival's Palme d'Or for best picture. The next year it picked up the Academy Award for Best Foreign Film. It has since attained classic status around the world, except in Oklahoma City. For now, anyone there who so much as possesses a videotape of the film—never mind watching it—risks spending 20 years in jail. A district court judge there last June declared the film to be child pornography.

His decision—made without a formal hearing—generated international headlines, as did the actions of Oklahoma City police: They took copies of the movie from video stores and even from private homes in the absence of filed charges and without search warrants. Whether they or the judge acted properly—and whether Oklahoma's statutory definition of child pornography is constitutional—will likely be answered in court.

But the case has implications beyond Oklahoma, which has a broader definition of child pornography than most other states. Over the past decade, the federal government has broadened its own obscenity laws, and while the Supreme Court has said these statutes are thus far acceptable under the First Amendment, this case may force the Court to consider whether such laws can run afoul of free speech protections.

The film, which had not previously been considered controversial, first began to run into trouble on a local Christian radio station when a talk show host told the story of an unhappy student required to view the film for a college class. Listening with interest was Bob Anderson, director of Oklahomans for Children and Families. Founded in 1984 as Oklahomans Against Pornography, OCAF has forced numerous adult-oriented businesses in Oklahoma to close and has succeeded in removing The Playboy Channel from local cable systems.

"The host said that he thought the film could be judged as child pornography," says Anderson. So Anderson's group checked out a copy of the film from the local library to judge for themselves.

Going to the library wasn't just a way to save on a video rental charge: OCAF has been at odds with the Municipal Library System Commission in Oklahoma City for some time. The group objects to the library system's policy of making anything on the shelves available to anyone regardless of age. Members cite numerous works they want removed or restricted to adults, including a series of adolescent novels by Robert Cormier.

"We have a procedure for people who wish to contest library policy to go through," says library spokesperson Julia Frefonke. "There are forms immediately available in the library for people to fill out." According to Frefonke, "OCAF has never followed that procedure." Instead, the group has preferred to complain directly to the volunteer commission that runs the library system.

In the case of *The Tin Drum*, however, OCAF took a different tack: It went directly to the police and asked that library officials be arrested for circulating child pornography. The police then took the film to Oklahoma County District Court Judge Richard Freeman.

Under Oklahoma law, the police do not need a judge's opinion to make an arrest if they believe they have a case of child pornography. "We felt that potentially it was both obscene and child pornography," says Capt. Ted Carlton of the Oklahoma City Police Department. "But we recognized that this was an award-winning film, so we took it to a judge to get his opinion." Judge Freeman found that the film was indeed child pornography under Oklahoma law.

That law declares child porn to be any actual, simulated, or described sexual act in which one of the participants or a depicted observer is under the age of 18, or appears to be prepubescent. As that definition makes clear, you don't need actual children to have child pornography in Oklahoma. Indeed, police there have gone after printed descriptions of child sex.

And in 1995, Oklahoma City police raided a shop called Planet Comics on a tip from OCAF, charging the owners with child pornography. The charges were based on cartoon drawings of sexual acts involving a "newborn demon" that bore slight, if any, resemblance to a human baby. Those charges were later dropped, but the owners still face misdemeanor charges of displaying material harmful to minors.

Based on an acclaimed and stylistically complex 1959 work by German novelist Günter Grass, the R-rated *Tin Drum* is an indictment of Nazism through the eyes of a seemingly young boy, Oskar. Protesting the adult madness around him, Oskar has "refused" to grow up. The role was played by actor David Bennent, then 12 years old.

Two scenes, of no more than 30 seconds each, caught Freeman's eye. In the first, Oskar and his young nanny are in a bathhouse changing room. Both are apparently nude, though viewers never see either's genitals. Oskar asks the girl how old she is, and she answers that she is 16. He too is 16, he says, and circles his arms around her waist. The scene then ends. This sequence has been described in the press repeatedly as one in which Oskar performs oral sex.

The second scene begins with Oskar and the girl in bed, dressed in night clothes. That scene ends as they start to play around, but it was apparently interpreted by the judge as a scene of sexual intercourse. That was enough to qualify the 142-minute film as child pornography. "The law doesn't make any exceptions based on literary or scientific value," observes OCAF's Anderson.

"You don't even have to have nudity," adds Bill Comstock, an attorney representing the library system. "If you have, say, two people rolling around under the sheets, that could qualify as sexual activity under the law if at least one of them is underage."

Once the judge ruled that the film was child porn, Oklahoma City police moved quickly to gather all copies of the film in their jurisdiction. They visited six video stores and left with cassettes, but whether the police "seized" the tapes or were given them has become an Orwellian matter of contention. "We take exception to the term *seizure*," says Capt. Carlton. "We solicited the voluntary cooperation of people in trying to abate future legal problems."

Winner of the 1980 Academy Award for Best Foreign Film, *The Tin Drum* is considered a work of child pornography by an Oklahoma judge—even though the film contains neither nudity nor any actual or described sex scenes. Local police seized copies of the video from the homes of persons who rented it.

What police told people was that the film had been ruled child pornography, and possession of child pornography is a felony. Police also persuaded video stores to turn over the names of two persons who had rented the film, and went to their homes to "solicit the voluntary cooperation" of those persons as well.

Since the police didn't have a warrant, this was a violation of the Video Privacy Act of 1988. Who violated the law is also the subject of finger pointing. "It's our understanding of that law that any violation would have occurred on the part of the video store, not on the police," says Carlton. The entire process from OCAF's complaint to the confiscation of the tapes took less than 72 hours.

One person whose home the police visited was Michael Camfield, development director of the state American Civil Liberties Union. Aware of the brewing controversy, Camfield had rented the tape at a Blockbuster before the judge's decision. "I asked them for their warrant, and they said they hoped it wouldn't come to that," said Camfield. "I got the impression that resistance on my part was futile."

Camfield and the ACLU have filed suit against the Oklahoma City Police Department, charging that Camfield's rights were violated when police seized the tape from his home. The Video Software Dealers Association has also filed suit against the police department. And Oklahoma County Prosecutor Bob Macy has gone to a second district court judge asking him to reaffirm that the movie is child porn and to enjoin the library system and local video stores from making it available. (Frequent updates about the Oklahoma City case are available at www.kino.com, the Web site of Kino Films, *The Tin Drum*'s American video distributor. Kino is also offering discounts to Oklahoma residents who order copies of the video.)

The most important of the issues the case will likely settle is whether a work like *The Tin Drum* is protected under the First Amendment. The Supreme Court has held that obscenity is not protected. In *Miller v. California*, the Court put forth its well-known three-prong test for obscenity: The average person, applying community standards, would find that the work, taken as a whole, appeals to a prurient interest; the work depicts sexual conduct in a way that would be offensive under community standards; and the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

But in *New York v. Ferber*, the Supreme Court held that the *Miller* test doesn't apply to child pornography. The government can outlaw child porn without regard to other issues. "This means that a work doesn't have to be judged as a whole," said Rick Tepker, a First Amendment specialist at the University of Oklahoma College of Law. "One depiction of minors engaging in sex can qualify a larger work as child porn."

Nor does it matter that the work may have a serious intent. "When judging child pornography, the Court has held that you don't have to consider whether a work has literary, artistic, or scientific value. Those issues don't even have to be considered."

But Tepker doesn't think the Supreme Court had in mind works like *The Tin Drum* when making its rulings, and he expects that, if the case reaches them, the justices will find that the film is indeed protected by the First Amendment.

Judge Freeman's ruling that *The Tin Drum* is child porn covers only Oklahoma County. District attorneys in at least three other Oklahoma counties viewed the film, but none took action against it. Bill LaFortune, the Tulsa County district attorney, announced that he would not prosecute anyone who sells, possesses, or shows the film. But he did caution those possessing the film "not to show it to minors."

"After viewing the film, we thought that it was indeed possible that it violates Oklahoma law," says LaFortune. "But after reviewing the relevant court decisions, we also thought it possible that the film was constitutionally protected. It's really in sort of a legal gray area."

LaFortune notes that the Supreme Court's cases have involved works featuring actual sexual activity by minors, or the lewd exhibition of the genitals of minors. "And neither of those elements is present in this film."

In Oklahoma City, however, film lovers will still view *The Tin Drum* at the risk of their liberty. The courts will eventually decide if authorities there have been too zealous in their pursuit of smut, and the city's younger citizens will, like Oskar, have a chance to consider if the adults around them are mad.

Contributing Editor Charles Oliver (c-oliver @usa.net) writes for Investor's Business Daily.

KINO ON VIDEO

Bones of Contention

A federal law stands between scientists and America's prehistoric past.

By John J. Miller

When Dave Deacy and Will Thomas found a human skull in the shallows of the Columbia River in July 1996, they thought they had stumbled across the remains of a murder victim. So they hid the skull in some bushes and notified the police in Kennewick, Washington. That evening, Benton County Coroner Floyd Johnson called James Chatters, a local forensics specialist and the owner of Applied Paleoscience, a resource management firm in nearby Richland.

About a dozen times a year, a county coroner leads Chatters into the field to examine mysterious bones found by somebody who wasn't looking for them. The coroner wants to know if he will have to reopen an unsolved missing person case. At Kennewick, Chatters and Johnson recovered an almost complete skeleton in good condition. Little did either of them realize that this discovery would set off an important academic and legal debate over the prehistoric settling of America and the ownership of the past.

"The bones looked very fresh," says Chatters. "They had a nice yellow-brown color to them, and that's how contemporary bones would look." The fact that they were located on a river bank also argued for a fairly recent vintage, since most bones do not weather well in a muddy environment. But soil adhered to them, suggesting strongly that they did not belong to a newly deceased person. Still, they seemed no more than 200 years old.

Back at his lab, Chatters quickly profiled the remains. They belonged to a white man of average height and slender build, somewhere between the ages of 40 and 55. He had suffered several serious injuries, including compound fractures to at least six ribs. "I thought we had found an early European settler," says Chatters. One point nagged at him, however. An arrowhead lodged in the right side of the man's pelvis was of a type commonly used in the region thousands of years ago. It had not gone completely out of style by the 19th century, but it was rare. Chatters re-examined the skull and also showed the remains to a colleague, Catherine J. MacMillan, a retired physical anthropologist from Central Washington University. She concurred that the skeleton was Caucasoid. To satisfy any lingering doubts about the age, the coroner asked Chatters to order radiocarbon dating on a finger bone.

NAGPRA has come close to stopping anthropological research on ancient remains. "If we lose Kennewick Man, then every ancient skeleton in the United States could be lost to this law," says biological anthropologist Richard Jantz.

The stunning results came back a week later. Ever since, a startling question has buzzed around the academic world and occasionally spilled into the popular press: What on earth was a white guy doing in the Pacific Northwest nearly 10,000 years ago?

Well, maybe not a *white* guy. It's a mistake to project modern racial categories onto the past, especially since this particular past is so long ago. Scientists have no way of knowing the color of Kennewick Man's skin—a point that Chatters and others have been careful to make from the start. But if they can't say with certainty that he was white, they can say he had a lot of traditionally Caucasoid features, as opposed to the Mongoloid ones characterizing most of today's Indians. His skull was long and his face was narrow and prognathic rather than broad and flat. And he lacked other features, such as shovel-shaped incisors, that are generally associated with Mongoloid people. Chatters recently said that Kennewick Man probably looked a lot like Patrick Stewart, the actor who played Captain Picard in *Star Trek: The Next Generation.* "These remains are an absolutely priceless piece of the human record," says David Murray, an anthropologist at the Statistical Assessment Service in Washington, D.C.

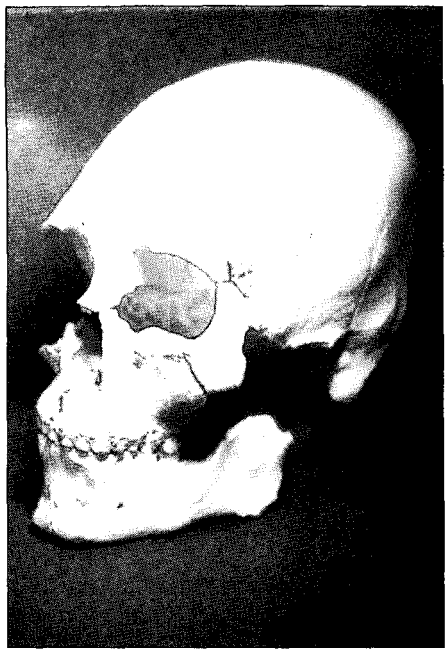
But they may soon be gone. Only a few days after the dating tests came in, the federal government seized Kennewick Man and prevented scientists from conducting further research on him. For more than a year, the remains have been locked away in a repository.

What happened? The answer lies in a piece of legislation passed by Congress and signed by President Bush in 1990. The Native American Graves Protection and Repatriation Act (NAGPRA) was meant both to protect existing Indian burial sites from disinterment and to help tribes reclaim the remains of ancestors stored in museums. The difference between an archaeologist and a grave robber is often in the eye of the beholder. NAGPRA was supposed to create a set of rules to resolve conflicts between scientists who study dead Indians, and living Indians hoping to honor tribal customs. But it was never intended to stop anthropologists and archaeologists from conducting important research on ancient remains. Unfortunately, it has come very close to doing just that. "If we lose Kennewick Man, then every ancient skeleton in the United States could be lost to this law," says Richard Jantz, a biological anthropologist at the University of Tennessee.

When human remains are found on federal property—Kennewick Man was located in an area managed by the Army Corps of Engineers—NAGPRA requires the government to contact any tribes that may share a "cultural affiliation" with the

bones. This bond is easy to establish when a grave includes funerary objects widely recognized as having been produced by a certain tribe. But not every case is so obvious. The older the remains, the harder it is to tie them to a modern tribe. And sometimes, as in the case of Kennewick Man, there are no clues apart from the bones themselves.

When uncertainties arise, tribes may claim the remains if they summon "geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion" in their favor. Such sweepingly vague language has made it extremely difficult to resolve several disputes to everyone's satisfaction. "There have been a lot of unintended consequences since the law was passed," says Phillip Walker, a physical anthropologist at the University of California at Santa Barbara.



A plaster cast of Kennewick Man's skull. When alive, he probably looked a lot like Patrick Stewart, who played Captain Picard in *Star Trek: The Next Generation.*

The Army Corps of Engineers decided that Kennewick Man's age showed beyond any doubt that he was an Indian. It confiscated the remains from Chatters's office and notified several local tribes of their existence. Within a few days, five tribes petitioned under NAGPRA to have the remains repatriated for reburial, an act that would forever remove Kennewick Man from scientific study. "Our elders have taught us that once a body goes into the ground, it is meant to stay there until the end of time," wrote Armand Minthorn, a leader of the Umatilla tribe.

The corps almost immediately complied with the tribes' request, publishing its intention to hand over the remains and forbidding any scientist to look at them in the meantime. During a 30-day waiting period between the announcement and the actual repatriation, however, a group of eight prominent scientists sued the corps. They said that it had misinterpreted NAGPRA, that Kennewick Man represents a national treasure with no apparent tie to any of today's Indian tribes, and that they want the opportunity to conduct in-depth examinations. They filed their case against the government with no institutional backing, since none of their universities wants to get involved in a lawsuit that appears to pit a bunch of white men against Indians. Several professional organizations also have chosen to sit on the sidelines for similar reasons. The plaintiffs are thankful to have a lawyer pursuing their case for free.

In many such NAGPRA disputes, science clashes with an odd combination of religious fundamentalism and political bargaining. Many Indians—particularly the sort likely to become involved in tribal governments—have embraced a kind of anti-scientific spiritualism as a way of promoting group cohesion. "We have our own science and traditions," says Suzan Harjo, president of the Washington, D.C.-based Morning Star Foundation and a member of the Cheyenne and Arapaho Tribes of Oklahoma. "What the archaeologists call evidence is usually based on what one person thinks might have happened," she adds. "It's such a Eurocentric point of view." The Umatillas' Minthorn feels the same way. "From our oral histories, we know that our people have been part of this land since the beginning of time," he says. "We do not believe that our people migrated here from another continent, as the scientists do."

Politics has also played a role. The scientists' Portland, Oregon–based lawyer, Alan L. Schneider, likes to point out that the Army Corps of Engineers is not a disinterested party in NAGPRA discussions. "They have a lot of ongoing dealings with all the tribes in the area," he says. The corps regularly negotiates salmon fishing rights with the Indian tribes claiming Kennewick Man, for instance. Schneider uncovered a revealing internal memo during discovery: "All risk to us seems to be associated with not repatriating the remains," it reads. In other words, the corps has privately acknowledged its strong political incentive to make good on the Indians' NAGPRA claim because doing otherwise would complicate its relationship with them.

The scientists would like the corps to take a longer view. "This is an incredibly important find," says Jantz, a plaintiff in the lawsuit. "There are maybe a dozen skeletons of this age that we know about. Each new discovery represents a significant increase in the amount of information available about the peopling of America."

Kennewick Man appears to challenge the conventional academic belief that North and South America were settled 10,000 years ago by Asian people crossing a land bridge between Siberia and Alaska. During the last Ice Age, sea levels were much lower than they are now, making such a passage possible. Yet the more scientists learn about ancient human migrations, the less predictable they become. Perhaps other types of people crossed this land bridge as well.

Archaeologists working in the Tarim Basin of western China recently uncovered more than 100 mummies that are several thousand years old. Many of these desiccated corpses are in such good condition that their fair skin and blonde hair is still visible. What were they doing in the middle of Asia? The Ainu people of Japan, a long-oppressed minority population, have an even more baffling heritage. Native to Japan before Mongoloid people settled on the island, they are known for their distinctly un-Japanese physical traits, such as light skin and wavy hair. In fact, they look a lot like Europeans. But nobody knows how to explain their presence so far away from Europe. Kennewick Man suggests that similar mysteries may lie hidden in the United States.

Other researchers are examining the possibility that some ancient Europeans

J.C. CHATTERS

made their way to the Americas the way the Vikings did before Columbus: by hopping from northern Europe to Iceland, to Greenland, and finally to Canada. The evidence for this is still highly conjectural. It hinges mainly on some intriguing technological similarities between ancient cultures in America and Europe.

Questions such as these won't be resolved if anthropologists and archaeologists cannot study ancient sites and remains found in the United States. And NAGPRA's vagueness about what constitutes a legitimate tribal claim gives federal agencies a license to disrupt that work. In the case of Kennewick Man, it's impossible for any modern tribe to demonstrate a connection with the remains, especially without further study. "Once you get beyond a certain age, it's extremely hard for a living tribe to make a claim," says University of Arizona geologist C. Vance Haynes Jr., who joined the lawsuit. The Army Corps of Engineers has simply assumed that since the bones are incredibly old, they must be related to tribes inhabiting the region today—as if nobody has moved in or out of the area for more than 9,000 years.

Kennewick Man is not the first case in which government regulations have prevented scientists from researching ancient finds. The Spirit Cave Mummy discovered in Nevada in 1940 was once thought to be only 2,000 years old because of its excellent preservation, but recent radiocarbon dating has suggested an age of 9,400 years. It, too, has several Caucasoid features. But earlier this year the Northern Paiute tribe claimed it under NAGPRA, and since then the Bureau of Land Management has prevented the Nevada State Museum from conducting genetics tests on the remains until it makes a ruling on ownership. Four years ago, a state law forced researchers to give a skeleton found near Buhl, Idaho, to the Shoshone-Bannock tribe for reburial. The remains may have had Caucasoid features and were dated at roughly 10,600 years, making them among the oldest ever found in the Americas. But little is known about them today, since they were quickly turned over to the tribe.

Robson Bonnichsen, director of the Center for the Study of the First Americans at Oregon State University and one of the plaintiffs in the Kennewick Man case, had a troubling run-in with NAGPRA several years ago. While investigating a Montana site that is at least 11,000 years old, he came across several strands of ancient human hair. When he went public with the find in 1993, two local tribes claimed the hair as the remains of their ancestors and demanded that Bonnichsen turn it over to them. The BLM prevented researchers from continuing their work at the site and barred them from analyzing the hair they had collected. Bonnichsen pleaded that there is a big difference between disturbing the buried remains of recent ancestors and studying hair that was almost certainly shed naturally very long ago. After a drawn-out battle, NAGPRA regulations were altered to allow the study of naturally shed hair, but Bonnichsen still has not received permission to conduct the chemical and genetic analysis he had planned.

"What the archaeologists call evidence is usually based on what one person thinks might have happened," says Suzan Harjo, president of the Washington, D.C.-based Morning Star Foundation. "It's such a Eurocentric point of view."

NAGPRA comes at a particularly inopportune moment. Recent technological advances allow researchers to obtain revolutionary new insights about ancient people. In July, German geneticists determined through mitochondrial DNA analysis that Neanderthals are probably not ancestors of modern humans. Such information would have been impossible to gather only a few years ago, and researchers would like to conduct similar experiments on Kennewick Man to learn more about his relationship to modern people. They would also like to reconfirm his age, obtain a more comprehensive set of skeletal measurements, and search for other clues about life in the past.

These sorts of investigation are routinely performed elsewhere, but the scientists' opponents would have the world believe that this is simply another morality play between treaty-breaking whites and reservation-bound Indians. "It comes down to racism," says Harjo. The implication is that whites would never think of exhuming the remains of their own ancestors. But nothing could be further from the truth. One plaintiff in the lawsuit, the Smithsonian Institution's Douglas Owsley, is studying bones recently discovered at Jamestown, England's first successful colony in North America. Other researchers have learned an enormous amount about prehistoric Europe by examining the 5,300-year-old "Ice Man" found in the Alps in 1991. Last year, a Danish museum sponsored a big exhibit of the so-called Bog People—corpses preserved in the peat swamps of northern Europe for thousands of years. If something like NAGPRA had applied to these remains, they would never have become important sources of information about the past. They would be in the ground, decomposing.

In July, the plaintiffs in the Kennewick Man standoff received some good news. A federal judge, finding that the Army Corps of Engineers had acted capriciously last year in its hasty decision to repatriate the bones, ordered the corps to reassess its decision. A few days later, Sen. Slade Gorton (R-Wash.) inserted language into an Appropriations Committee report saying that "it is in the public interest that information providing greater insight into American prehistory should be collected, preserved, and disseminated for the benefit of the country as a whole" and urging the corps to "act as an impartial party" in the dispute.

The tribes may still get Kennewick Man, but now a judge has imposed a tougher standard on their claim and some political pressure has come to bear on the corps. The bones still sit in a government vault, and the case is likely to grind on for at least a few more months. "I think Kennewick Man has been a good thing if only because it has focused so much attention on this problem," says Jantz. "It just has to have a happy ending."

John J. Miller (millerjj@aol.com) is vice president at the Center for Equal Opportunity. The Free Press will publish his book on Americanization next year.

Unlovely Spam

Efforts to deter unsolicited e-mail may cause more problems than they would solve.

By Michael W. Lynch

Despite having been besieged by the Internet community and slapped down by the Supreme Court for its overreaching Communications Decency Act, Congress is again pondering a foray into cyberspace. But this time, lawmakers will be acting at the behest of many in the Internet community itself. They are plagued by a problem they think only Congress can solve: unsolicited commercial e-mail. The junk mail of cyberspace, known derisively as "spam," is increasingly clogging the e-mail boxes of the Internet's most active users. Washington's solutions, depending on who is doing the solving, range from outright prohibition to a government-enforced labeling requirement. But such solutions create problems of their own: Once invited to exert its authority in cyberspace, Congress is not likely to leave.

Three anti-spam bills are now pending before Congress. Rep. Christopher Smith (R-N.J.) introduced the Netizens Protection Act of 1997 in May. Backed by the most ardent privacy activists and small Internet service providers (ISPs), Smith's bill uses a 1991 law that outlawed unsolicited commercial faxes and applies its restrictions to e-mail.

Smith's New Jersey colleague, Democratic Sen. Robert Toricelli, takes aim at the mailbox. His Electronic Mailbox Protection Act of 1997 would outlaw the harvesting of e-mail addresses and require *all* senders of unsolicited e-mail—not just commercial senders—to use valid reply addresses.

Sen. Frank Murkowski (R-Alaska) has introduced the Unsolicited Commercial Electronic Mail Choice Act of 1997, which would require spammers to put the word *advertisement* in the subject line and to honor requests to remove names from their lists. Murkowski's bill would require ISPs to offer screening of such commercial e-mail in two years.

Each of these bills would allow individuals to sue those who continue to splatter them with spam after they have been asked to stop. Hearings on the bills, which have been referred to the respective commerce committees, are not expected until late fall.

It is not surprising that members of the Internet community have approached Congress. Of all the issues swirling around the Internet, from porn to privacy, spam seems the one most resistant to private solutions. Sending junk snail mail carries per-piece costs of printing and postage, but the effective marginal cost of spam is zero. A budding spammer can purchase a list of a million addresses for only $11. As a result, spammers have little incentive to target their audience, and few do.

So far, wily spammers have eluded all attempts at technical fixes, such as e-mail screens. And like junk faxes that force the recipient to bear part of the freight (toner, paper, and opportunity cost of having the fax machine tied up), spammers foist costs onto others. Internet service providers, especially the smaller shops, complain of clogged servers. Their customers pay for spam-generated slowdowns in addition to bearing the opportunity cost of each two-second click on the delete button. In areas where net connections are still metered, people also pay for the download time.

But tempting though it may be to call in the feds, the spam issue demonstrates the inherent dangers of state intervention in the Internet's evolving ecology. Along with the feds come the threats of abridged speech and increased regulation.

In principle, it is unacceptable for any party—individual or corporate—to force anyone else to pay for something that he or she doesn't want. Hence the attraction of Smith's bill outlawing unsolicited e-mail, which is backed by a coalition of small ISPs and frequent Internet users. This bill would create an "opt-in" system, in which it would be illegal for companies to communicate with netizens unless first granted permission. That would appear to be a broad prohibition on speech, but backers of the bill claim the approach has been upheld as constitutional. In the 1995 case *Destination Ventures Ltd. v. FCC*, the Court of Appeals for the 9th Circuit ruled that advertisers have no right to force people to pay for advertisements they neither asked for nor want.

National regulations are inherently ineffective in a global medium. The low marginal cost of e-mail provides a basis for an argument against such regulations. Spam haters are right to herald the anti-junk-fax law as a success; the law has served its purpose of unclogging fax machines. But while a junk faxer faces a high freight charge for moving his broadcast fax machine offshore, there are no long-distance charges on e-mail.

The analogy between fax and e-mail is imperfect, however, and Smith's bill raises numerous concerns. E-mail is interactive, with much richer content than faxes. For example, an e-mail message from a stranger seeking political support may have embedded in it a link to a Web site that contains advertising. Also, the line between what is *commercially* annoying and merely annoying is not always clear on the Internet, an inherent problem with any

bill attempting to label speech.

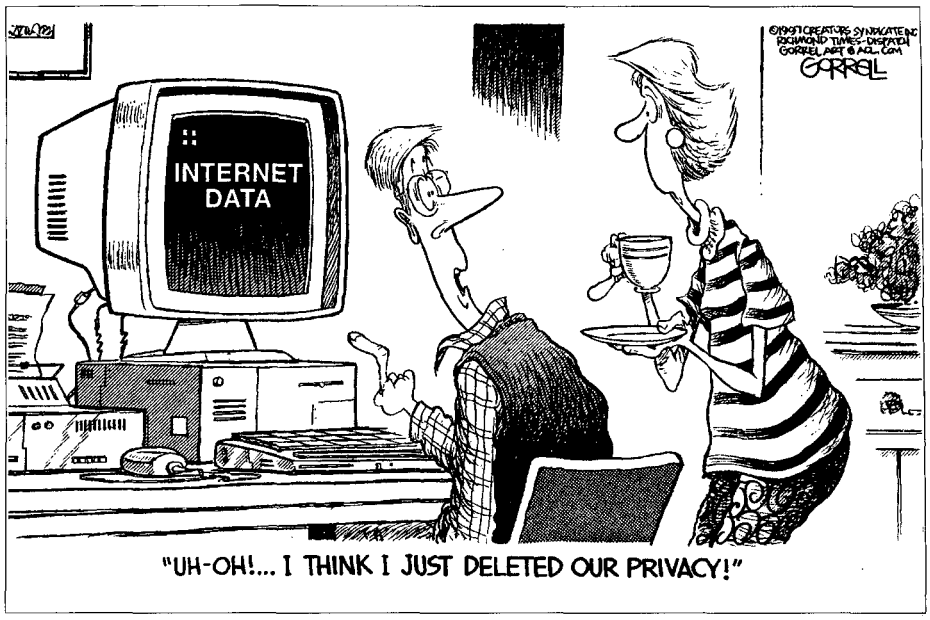
"What if a professor developing a new mathematical model wants to get it out, so he sends a spam? Is this commercial speech or academic speech?" asks Solveig Bernstein, a telecommunications analyst at the Cato Institute. "What if a corporation sends out a spam saying it has information on a certain disease, and 99 percent of the information is free but they are also trying to sell something. Is this prohibited?"

Furthermore, the very rhetoric in which some politicians are couching the issue reflects the paternalism they are always ready to apply to Internet issues. The title of Smith's legislation—the Netizen Protection Act of 1997—gives an indication of the governing mind set. In his press releases and speeches, Smith repeatedly refers to "passengers on the information superhighway," as if those who built the medium, maintain it, and are providing its content are its passive victims.

Listen to what Smith—a strong supporter of the Communications Decency Act—said on introducing his bill: "The Internet user, or Netizen, is in a vulnerable position in the new medium and we in Congress cannot stand idly by as law-abiding citizens have their privacy invaded on an almost regular basis." Just how "vulnerable" are people on a medium they freely choose to frequent? If there is one sure characteristic of politicians who talk this way, it is that they are never satisfied to stand idly by when they could be passing more legislation.

Similar problems are embedded in the Murkowski bill. At first glance, it appears to be the most moderate, merely requiring the word *advertisement* to appear as the first word in the subject line of commercial e-mails. Besides running into the problem of where information stops and advertising starts in this medium, such a requirement weakens the case for informational liberty on the Internet.

There are legal distinctions between commercial speech and speech that is merely made available to the public. But if Washington can mandate labels for ads so people don't have to click on a delete button, the obvious next question is, Why shouldn't it mandate labels for Web pages so children don't stumble across something objectionable? Indeed, the Clinton administration is moving ahead with just such an approach, urging Web site operators to use rating labels. Much to the chagrin of free-speech activists, such major companies as Yahoo Inc., Excite Inc., and Lycos Inc. are falling right into line.



BOB GORRELL

Toricelli's bill doesn't make distinctions between commercial and noncommercial spam. It merely outlaws the method—blasting off more than 25 unsolicited messages without proper return addresses. But this threatens to prohibit political and religious speech, which are protected at a higher level than commercial speech under current jurisprudence.

Besides these theoretical objections, there is the practical objection also raised by opponents of the Communications Decency Act: National regulations are inherently ineffective in a global medium. In this instance, the low marginal cost of e-mail provides a basis for an argument against such regulations. Spam haters are right to herald the anti–junk-fax law as a success; the law has served its purpose of unclogging fax machines. But while a junk faxer faces a high freight charge for moving his broadcast fax machine offshore, there are no long-distance charges on e-mail.

Are there better solutions to the spam problem than these laws? There isn't one simple solution, but there are a number of better strategies available. One, in fact, involves the government acting under current law.

In June, the Federal Trade Commission held a series of hearings on privacy at which the issue of spam was explored. It quickly became clear to the FTC that much spam—which has degenerated into amateurish pitches for porn and pyramid schemes—is fraudulent, both because the content is false and the e-mail removal instructions are inaccurate. "Isn't fraud or deception under our existing authority?" asked FTC Commissioner Christine Varney. They are, and the FTC is exploring ways to crack down on spammers.

Jason Catlett, CEO of Junkbusters, a for-profit firm that specializes in freeing "consumers from junk communications of all kinds," is working to give individuals legal recourse against spammers. Junkbusters provides a service, JUNKBUSTERS SPAMOFF, which allows individuals to build "no solicitations" notices on their web sites. Included in the service is a reply to spammers that they are free to continue to send spam for $10 a message.

"The fact that spammers are operating outside the law suggests that this legislation won't be effective," states Catlett. "It may dampen it somewhat, but compared to the damage that [new legislation] stands to do with unforeseen effects, I don't think it is worth it at this stage."

In the wake of the FTC hearing, the Washington–based Center for Democracy and Technology is hosting workshops in which major stakeholders, from consumer and industry activists to major corporate players, such as America Online, MCI, and AT&T, are exploring solutions to the

problem.

Outside the Beltway, the San Francisco–based Electronic Frontier Foundation has started a project to bring together ISPs, network backbone providers, direct marketers, and free speech advocates to explore ways to attack the problem. EFF plans to: explore an informal opt-in system, in which a central list of individuals willing to accept spam is maintained; work with network providers to incorporate certain minimum standards into their contracts; and develop more robust filters.

Robin Lee, the spokesman for the anti-spam project at EFF, does not oppose legislation that would set up such background norms as mandatory removal, or that would authorize civil recovery against intransigent spammers. But he does oppose legislation that would outlaw a whole class of speech. "It is one thing to say that the government should create a right of recovery for harms, but it is quite another to say that it should determine the exact solution," states Lee. "I think in many ways that is what people are looking for. Pass a bill, get it in one bang."

At its core, spam is a pricing problem; it needs a pricing solution. Technology commentator Esther Dyson predicts that ISPs will develop smart e-mail systems, which allow e-mail from known users to pass freely but charge e-mails from unknown users a fee, depending on the subscriber's preference for receiving unsolicited e-mail. The fee would be set by the recipients, who would then be making the tradeoff between being bothered by unwanted mail and the risk of missing messages they might want. A recipient could refund a fee if she found the information useful or responded to the message.

Such a system, which could evolve entirely free of government intervention, would force the e-mail sender to consider the preferences of the end user. Sending spams containg sexual materials to convents would have little commercial value. But sending the same messages to *Hustler* subscribers might yield a profit.

"Many people will refuse to read unlabeled mail from people they don't know unless paid," Dyson predicts. "But that will be their decision, not a government requirement. The essence of the system would be flexibility and choice."

Yet for now tempers are hot, and people want a solution. "There is something visceral about e-mail," says EFF's Lee. "It is far beyond annoyance. It stirs up the worst in people." This is precisely why Congress should not be invited in. As Cato's Bernstein notes, "Congress isn't in the habit of hesitating in the face of its own ignorance." It is hardly in the long-range interests of the Internet community to encourage congressional involvement, especially when, on every other issue, that community claims both its ability and its desire to regulate itself. Spam may get worse before it gets better, but a nonlegislated solution would keep its life short, and cyberspace free.

Michael W. Lynch (dc@reasonmag.com) is REASON*'s Washington editor.*

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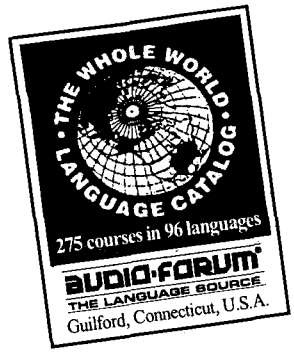

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Readin', Russians, and Romance

So Tolstoy's not Russia's best seller? When was he?

By Charles Paul Freund

Book sales in post-communist Russia are exploding, reports *The Washington Post.* Russians are demonstrating a bottomless, virtually insatiable hunger to read. But the paper's story, which appeared in July and was filed by *Post* correspondent David Hoffman, is told as much in sorrow as in celebration. What Russians are reading these days, he writes, "falls well short of the country's great literary tradition."

The very headline breathes a cultural sigh: "It Isn't Tolstoy, but Russians Are Reading Up a Storm." And what the stuff that isn't Tolstoy is, is a lot of pulp fiction, how-to books, ephemeral celebrity bios, quickie translations of formula romance and science fiction, short-lived computer books, and so on down a list of disposable nonclassics that largely matches what people everywhere seem interested in reading. Yet so deep is the shadow cast by Russia's classic literary canon that even Russian book men sound embarrassed about their emerging popular market. This period of junk reading is only temporary, one wholesaler told the *Post* rather dolefully; an understandable escape from the continuing social upheaval. "Maybe in five more years," he hoped, "we'll go back to reading Tolstoy."

Uh huh. It would be hard to overstate the status accorded by Russia's cultural establishment to the nation's acknowledged masters of poetry and prose. If you don't recognize Dostoyevsky's or Turgenev's characters by name, or Pushkin's or Akhmetova's poetry by line, you cannot claim to be a cultured citizen. Indeed, many such figures are more than respected writers; they are prized national symbols of aesthetic achievement, resistance to tyranny, even—as in the case of Tolstoy's own later period—spiritual transcendence.

On the other hand, Russia's prestige literature has a very long history of being outsold by books with far more mundane content. And it is this context that makes what is apparently going on in Russia today so interesting: A mass readership is reasserting itself and its interests, and it is taking up largely where it was interrupted in 1917.

As it happens, the *Post*'s own account uses an especially revealing example as its framing device: The story begins and concludes by citing the enormous popularity among Russians of translations of Harlequin Books, the well-known series of Canadian paperbacks that built its fortune on selling carefully packaged fantasies of romance. Harlequin represents a landmark in the marketing of genre fiction: Its devotees don't appear to buy particular stories or particular authors so much as they buy a brand name that promises, over and over again, to provide an entirely predictable but satisfying experience. Uniformly designed and written to the most specific of formulas, Harlequins were intended by their 1970s marketing director—a veteran of Proctor & Gamble—to be to books what L'Eggs were to pantyhose, as publishing historian Thomas L. Bonn has phrased it.

In the years before the Revolution, *War and Peace* was a long way from being Russia's best-selling title. For that matter, *War and Peace* was not even Tolstoy's own most popular title; his best-selling work was *The Kreutzer Sonata*, which is about sex. But that and every other Russian novel was outsold by *The Keys to Happiness*, a 1,400-page epic of romance and sexual liberation.

That strategy has worked in Western markets for years, and now it is working in Russia. In fact, the *Post* account's opening scene features a sidewalk bookseller buying batches of Harlequin titles from her wholesaler by the number: "Number 105—where is it?"

Certainly, this is a very long way from *War and Peace.* But then in the years before the Revolution, *War and Peace* was a long way from being Russia's best-selling title. For that matter, *War and Peace* was not even Tolstoy's own most popular title; his best-selling work was *The Kreutzer Sonata,* which is about sex. But that and every other Russian novel was outsold by something called *The Keys to Happiness,* a 1,400-page epic of romance and sexual liberation by the exceedingly flamboyant author Anastasia Verbitskaya. While very much a product of its time, the appeal of Verbitskaya's now-forgotten work has a great deal in common with what sells so many Harlequins.

The six volumes of *The Keys to Happiness* tell the story of one Mania Eltzova, her search for personal fulfillment in art and love, and the price she eventually pays for her independence. According to synopses (the work seems never to have been translated), the novel is filled with melodramatic encounters and sexual affairs, and lots of talk about art, feminism, and revolution. The eponymous key to happiness, by the way, is a woman's ability to enjoy sex without letting her emotions get in the way.

The work created a scandal, was turned into the most popular movie of the prerevolutionary era, and inspired a crowd of women novelist imitators who used Verbitskaya to found a genre. In fact, it wasn't the book's sexual angle per se that made the book so popular. The so-called Women's Question had been debated in Russia

for decades, and was at the heart of earlier novels, most notably the 1863 title *What Is To Be Done?*, without doubt the most influential work of 19th-century Russia. Verbitskaya's breakthrough was to turn the subject into pure soap opera.

Furthermore, *The Keys to Happiness* is very openly indebted for its ideas to other best-selling novels that it assumes its readers are familiar with. It is very closely related to the sensational novel *Sanin* by Mikhail Artsybashev, which swept Russia during this period; Verbitskaya even has her characters discuss the other novel's ideas.

These and other, related novels were made possible by the change in censorship laws that followed the upheavals of 1905, and for a dozen years Russia's reading market zoomed in on popular concerns. This was a period in which vast economic changes were occurring in the country, especially in the two cities that, in the end, constituted most of Russia's cultural market, Moscow and St. Petersburg. People from classes that had previously lived extremely constrained lives began to entertain fantasies of social mobility, success, and fulfillment. As scholar Jeffrey Brooks points out, the work of Verbitskaya and her contemporaries lacks any of the folkloric elements so prominent in the country's earlier popular literature, and indicates the rise of a different kind of reader.

That is really the point of this whole body of popular reading: It was an emerging literature not only of escape, but of personal possibility. Of course, it was completely snuffed out in 1917 by the communists, whose 72 years of cultural tyranny are a well-known—and almost total—fiasco.

Now they're gone, and look who is back: Mania Eltzova, now multiplied by the Harlequin hundreds, her life and loves suitably updated and repackaged. Incidentally, Verbitskaya's original heroine eventually pays for her daring choices by committing suicide, an unhappy ending that just doesn't happen in the Harlequin formula. But there's surely a lesson in that, too.

Charles Paul Freund (cpf@his.com) is a REASON *senior editor.*

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Free To Commit

"Covenant marriage" could strengthen families. So why are traditionalists lukewarm?

By Walter Olson

"New Louisiana Law Makes It Harder to Divorce," misreported NBC News on July 3. "New Louisiana Law Makes It Easier to Commit to Marriage Vows" would have been more like it. Either way, you'd think this summer's news from the Bayou State would have had traditionalist conservatives dancing in the streets, as far as is consistent with the decorum we expect from them. After years of griping about this country's disastrous rates of family breakup, there now springs up the boldest challenge yet to the "no-fault" divorce laws that are widely blamed for those rates. Sixties liberationist notions, finally busted flat in Baton Rouge: For a "pro–family" conservative, what's not to rejoice in?

But the politics of "covenant marriage" turn out to be rather more complicated, and symptomatic of the trouble in getting the right—will it soon be time to start calling it the former right?—to agree on much of anything these days. For the fact is that some influential leaders in the "pro-family" camp have been privately quite cool to the covenant marriage idea; by the time this column sees print, they may have publicly started throwing cold water on it. If the innovation is to catch on in other states, it may need the backing of others—maybe libertarians.

For those who came in late, the law signed by Gov. Mike Foster in mid-July (with an effective date of August 15) allows Louisiana couples to opt into an alternative marriage contract that's more genuinely binding than the default variety. Under modern "no-fault" divorce rules as they prevail in all 50 states, either side can bail out of a marriage at short notice, no matter the blamelessness of the other partner. Under covenant marriage, a Louisianan who wants out of wedded bonds will have to cool his or her heels through two years of separation—as opposed to 180 days under the state's no-fault law—or show a judge "definite cause." Definite cause will include adultery, a felony conviction leading to imprisonment, desertion for a year, or abuse of spouse or child. In addition, a covenant couple will have to submit to counseling both before a divorce and before the marriage itself.

Divorce reform has been quietly moving up the political agenda for years, a reaction to today's era of unilateral no-fault divorce. Although the no-fault revolution that began in the 1960s was advertised in some quarters as liberating, it would be a mistake to assume a priori that libertarians should find it an improvement over what came before. After all, the modern revolution simply replaced one prescribed-and-invariant marriage contract—one that made it relatively hard to ditch an uncooperative spouse absent proof of serious fault—with a different prescribed-and-invariant contract—one that made it hard to offer or obtain a binding commitment to stick it out in a marriage through better or worse. Some couples entering matrimony undoubtedly prefer the looser tie, but many others definitely do not, and our current law deprives them of the freedom to strike bargains they'd want to enter in pursuit of genuine security.

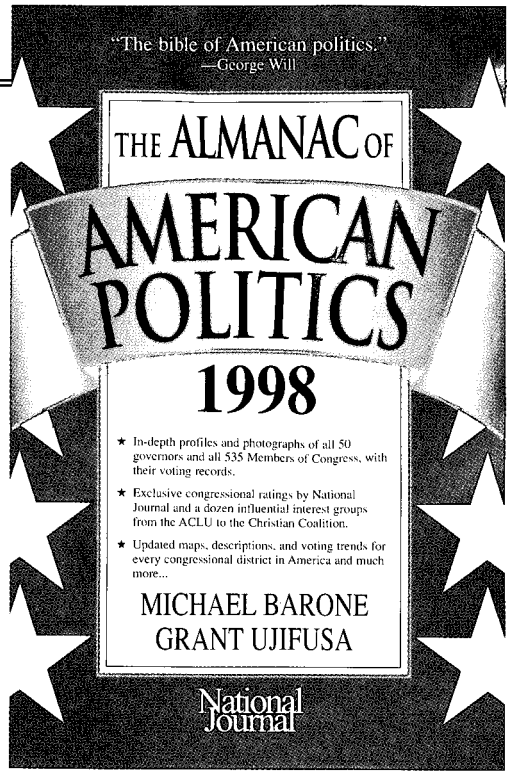
The modern revolution simply replaced one prescribed-and-invariant marriage contract with a different prescribed-and-invariant marriage contract—one that made it hard to offer or obtain a binding commitment to stick it out in a marriage.

The difference between the two contracts is important in helping determine how married persons behave not only in extremity, when divorce has begun to seem thinkable, but also in happier times. A successful marriage requires vast personal investments: of income and professional opportunities forgone, often disproportionately by the wife; of many personal habits overcome and amusements set aside in the joint interest; of the stupendous resources and sheer effort required in rearing children and making a home in general.

"What happens to marriage when we declare that these investments will not be protected?" asks David Wagner, a writer with *Insight* and former director of legal policy at the Family Research Council. "The same thing that would happen to business if we were to declare that, henceforth, business contracts will not be enforced." Prevent builders and property owners from enforcing construction contracts against each other, and tumbleweeds will eventually roll down the streets, a fate some see ahead for the "little civilizations" of family life as well.

Defenders of no-fault can offer some plausible comebacks. The new rules do permit some marriages-made-in-hell to dissolve without brutal, protracted disputes over blame (though couples inclined to fight can usually find plenty to spar over on property, custody, and visitation issues). To some extent, too, a rising divorce rate surely reflects an ever-wealthier society's ability to afford the high cost of separate establishments for unhappy couples whom economic necessity once forced to stay under one roof. And in refusing to recognize even genuine mutual consent as grounds for divorce, the old law provided an incentive for the artificial manufacture of "fault," which led to connivance at perjury.

There's also the matter of the legal system's competence at enforcing a complex obligation many of whose dimensions can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National Journal

be subjective, hard to document, or both. Columnist Maggie Gallagher, whose *The Abolition of Marriage* (1996) has emerged as a leading manifesto of the movement to roll back unilateral divorce, agrees that many who in principle might support tougher divorce law lack confidence in "the government, frankly, to determine who's at fault. People don't trust the legal system to determine who committed a murder, let alone whose conduct destroyed a marriage."

Until lately, the one assumption that seemed safe was that the balance between these evils would be struck by the political class: legislators, judges, and the kinds of experts and activists who run campaigns in the press or get themselves appointed to blue-ribbon commissions. But now Louisiana has come up with a much more radical idea: Ask couples themselves what they think.

No casual poll of local voters could reveal as much about true preferences as will the decisions of couples whose own future happiness is on the line. Not surprisingly, opponents of easy divorce are predicting that Louisianans will vote with their rings, and in droves, for stronger commitment. The "genius" of the covenant marriage option, says Gallagher, is that it will refute the notion that the no-fault marriage is "the kind of marriage that most people want."

Many on the other side, interestingly, appear to agree. They write as if the new format will be too popular—and as if that were a reproach. Columnist James Gill of the New Orleans *Times-Picayune* complains that "many couples will feel compelled to take the covenant route," given how insulting it could seem to eye the exits before so much as crossing the threshold, and given that some religious denominations have announced plans to encourage or require the stronger contract for members in good standing. Compelled to choose one way, because the reasons to do so are too strong—makes unfreedom almost seem like an improvement, doesn't it?

Probably there are some genuine reasons not to get too thrilled about a menu-driven law of matrimony. "Some things work best when not plumbed quite so deeply," warns Judge Alex Kozinski of the U.S. Court of Appeals for the 9th Circuit in an interview. Kozinski adds that it may be felt as intrusive for the state to put couples "on the spot" about the extent of their commitment. Louisiana's covenant option itself is fairly mushy compared with the strictness of older divorce law: It will allow, for example, claims of "emotional abuse" to be cited as cause. By contrast, until 1971 Idaho required that an applicant for divorce prove such things as extreme cruelty, chronic drunkenness, desertion, permanent insanity, or a felony conviction. Until the 1940s South Carolina had no general divorce law on its books at all.

In addition, the whole effort may prove beside the point if covenanters who change their minds can simply hop the border and file for divorce in another state whose laws do not recognize a covenant option; under current practice, most states would probably apply their own no-fault laws, even at the cost of ignoring the couple's original intent. In the era of the Clare Booth Luce play *The Women*, evading the divorce law of one's own state might require an extended sojourn in remote and barely populated Nevada; but for residents of Shreveport, Lake Charles, and New Orleans, escape from covenantal bonds may be only an hour or two away, a plausible impulse move and one that might even be within commuting distance of their current jobs.

Washington's "pro-family" lobby has been mum about covenant marriage, while their constituents around the country have wanted to bring the Louisiana idea to their own states. Some of these constituents who called Washington have been met with broad hints to calm down.

What was curious about this summer's debate was the extent to which the conservative press kept silent, even as mainstream outlets like *Time* and *The New York Times* were giving big play to the Louisiana developments. But then leading publications on the right tend nowadays to defer on these issues to Washington's "pro-family" lobby, most of whose leaders in turn were keeping noticeably mum on the issue.

Not that they could have missed it: Constituents around the country were buzzing about how they could help bring the Louisiana idea to their own states. It would seem that some of these constituents who called Washington have been met with broad hints to calm down: We're not sure this is an idea we're backing. Gallagher, herself "very enthusiastic" about covenant marriage, confirms that many pro-family colleagues have leaned negative on the idea in "conversations behind the scenes."

What's their objection? Some have privately said that any step that would explicitly "redefine marriage"—even in a traditionalist direction—is dangerous, because it opens the door to the idea of further redefining it by an act of will. And especially sinister, it seems, is this business of redefining marriage by providing the parties a *choice*, thus encouraging them to think their obligations might be shapeable in part by mutual will rather than by prescriptive authority alone. Once you let in the notion of choice, it's being warned, you start "privatizing marriage," giving the other side a basis to argue for a dozen other choice-based innovations in family law, from "trial marriage" to same-sex unions —not to mention divorce by genuine mutual consent, anathema to trad hard-liners.

No doubt about it: When it comes to strengthening the family, no one talks a better game than our trad friends. In the meantime, any number of actual couples around the country who look to them for guidance may have to go elsewhere for help in obtaining Louisiana-style steps to help secure their own futures against temptation. They might be better off turning to supposed atomistic individualists like us, who haven't forgotten that the principle of free contract, powerful though it may be as a solvent, works even better as an adhesive.

Contributing Editor Walter Olson (hambo@eci.com) is a senior fellow at the Manhattan Institute and author of The Excuse Factory: How Employment Law Is Paralyzing the American Economy *(The Free Press).*

Family Ways

By Nick Gillespie

The Divorce Culture: How Divorce Became an Entitlement and How It Is Blighting the Lives of Our Children, by Barbara Dafoe Whitehead, New York: Alfred A. Knopf, 224 pages, $24.00

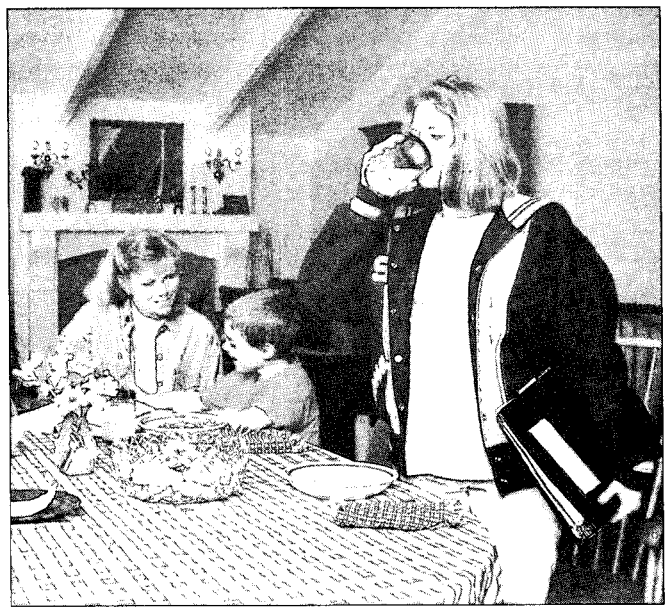
The Assault on Parenthood: How Our Culture Undermines the Family, by Dana Mack, New York: Simon & Schuster, 363 pages, $25.00

She Works/He Works: How Two-Income Families Are Happier, Healthier, and Better Off, by Rosalind C. Barnett and Caryl Rivers, New York: HarperCollins, 260 pages, $24.00

Anyone who even occasionally tunes into television and radio talk shows, skims a newspaper editorial page or an opinion magazine, or browses the nonfiction aisles at a bookstore is familiar with some variation on the following theme: "The family, in its old sense...is disappearing from our land, and not only our free institutions are threatened but the very existence of our society is endangered." This formulation of the problems facing "the family" is interesting for at least three reasons. First, as is often the case in such discussions, it invokes *the* family as a wholly self-evident, unitary phenomenon with no possible variation. Second, it captures the lure of traditional social arrangements and articulates the centrality of the family to society at large. Third, the statement is well over a century old, having originally appeared in an 1859 issue of the *Boston Quarterly Review.* That it sounds so current is worth pausing over.

Americans have long worried that "the family" is an endangered species. (The subject was even a regular topic of Puritan-era jeremiads.) Of course, that we have always fretted over the family doesn't mean that contemporary musings on the subject are necessarily naive or that they should be dismissed as so much perennial hand wringing. If anything, arguments like the one in the *Boston Quarterly Review* convey an important—if partial—truth: The family in its "old sense" *is* always breaking down and being reformulated, as are other institutions in a society still at least loosely based on classical liberal notions of choice and competition. Indeed, such a process is central to any social order in which people, to quote F. A. Hayek, gain "the opportunity of knowing and choosing different forms of life."

Recognizing change as continuous helps place the anxiety it creates in better perspective. And given the anxiety over "the family," the more perspective, the better. Discussions of family life are almost always conducted in highly apocalyptic terms; they also often suffer from a tendentious use of social scientific research (itself often tendentious). A person taking virtually any position can buttress it with a raft of seemingly reliable studies that perfectly illustrate a given point (or demolish someone else's). In such a debate, "revealed preference"—what people actually *do*, versus what they or someone else says they really want to do—becomes all the more important.



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The family in its "old sense" is always breaking down and being reformulated, as are other institutions in a society still at least loosely based on classical liberal notions of choice and competition.

This much, at least, seems clear: Families at the end of the 20th century are significantly different from what they were at its start, with higher marriage, divorce, and female work force-participation rates, higher age at first marriage, and lower numbers of children. Notwithstanding the anomalous baby boom period—when divorce rates and the age of marriage dropped, and the number of children per family increased—these are long-term trends widely associated with the shift to an industrial economy.

As is clear from her title, Barbara Dafoe Whitehead focuses on divorce, especially its effects on children (about 60 percent of all divorces in the United States involve minor children). *The Divorce Culture* seeks to explain how divorce went from a rare event to a common one: In 1920, there were about 8 divorces per 1,000 married females; in 1985 the number reached 21.7. Despite some peaks and valleys—rates were sharply elevated from 1941 to 1948, because of hasty wartime marriages; rates declined slightly from 1950 through 1958, for reasons that remain unclear—the divorce rate increased relatively steadily until the late '80s. Since 1987, it has held constant at 20 to 21 per 1,000.

On the most basic level, Whitehead's plea that any discussion of divorce acknowledge the effect on children is unobjectionable and commonsensi-

cal, as is the implication that, in general, an intact, relatively happy family is preferable to a broken, relatively unhappy one. However, she overstates the consequences of divorce for children and the linkage between divorce and developmental problems. And while she correctly points to the "logic of capitalism" as the lurking culprit behind the increase in divorce rates, she does so for the wrong reasons.

Beginning in the late 1950s and coincidental with the psychologization of American society, we entered an era of what Whitehead calls "expressive divorce," in which a person's self-defined happiness and satisfaction reign supreme. Casting divorce as an "inner journey of the self" reduced "the number of legitimate stakeholders in divorce to one, the individual adult." The right to divorce effectively became, says Whitehead, first a psychological entitlement and eventually a legal one, as no-fault divorce laws became ubiquitous during the 1970s.

While divorce is tough on the spouse who is left behind, Whitehead stresses even more the problems it creates for children. (She estimates about 45 percent of children will see their parents divorce before reaching 18.) In the book's most interesting—and contentious—section, Whitehead traces academic and popular treatments of how divorce affects children. Where earlier research celebrated the emotional resilience of children, work done since the mid-'80s focuses on disruptions in children's normal developmental patterns.

The results from the newer research, she reports, are bleak. Divorce "increased the risk of poverty and welfare dependency in families with children that were not poor or welfare-dependent before divorce"; children living with a divorced mother had a poverty rate of 38 percent in 1993 (compared with 11 percent for children in a two-parent family). Remarriage —about two-thirds of women and three-quarters of men remarry after divorce— solves some problems but not others: Though the income of a stepfamily is usually equivalent to that of a first marriage, children are "two to three times more likely to suffer emotional and behavior problems and nearly twice as likely to have developmental or learning problems as children in intact families"; stepchildren are also more likely to drop out of school, become unwed teen mothers, and have difficulty holding steady jobs as young adults.

While she grants that it is better that some marriages dissolve and that some children benefit from divorce, Whitehead almost exclusively stresses its negatives, relying heavily on the controversial work of Judith Wallerstein. Beginning in the 1970s, Wallerstein conducted a longitudinal study of 60 pairs of divorcing parents and their 131 children from a San Francisco Bay–area divorce clinic. Wallerstein's research, says Whitehead, demonstrates that "the experience of parental divorce damaged many young adults' ability to forge strong attachments of their own, in both their work and their family lives."

Most economists and sociologists agree that increased female participation in the paid work force is one of the—if not *the*—major factor in the rise in divorce rates. In 1940, about one in seven married women were working or looking for work. Fifty years later, the figure was closer to 70 percent.

Wallerstein's work, however, is far from definitive. Beyond the lack of a control group of similar, nondivorced families, she has been criticized for including parents with histories of psychiatric problems. Indeed, Wallerstein herself classified half the men and almost half the women as "moderately disturbed or frequently incapacitated by disabling neuroses and addictions." Additionally, 15 percent of the men and 20 percent of the women were "severely disturbed," with long histories of mental problems; only a third, according to Wallerstein, had "adequate psychological functioning" before the divorce.

While few—if any—contemporary researchers are Pollyannaish about the effects of divorce on children, there is a wider range of credible research than Whitehead seems willing to admit, most of which suggests only a minority of children exhibit long-term serious problems. As researchers Paul R. Amato and Bruce Keith concluded in a 1991 survey of 92 divorce studies: "Parental divorce (or the factors associated with it) lowers the well-being of children. However, the estimated effects are generally weak." And results from the National Survey of Children, which conducted interviews with the same parents and children in 1976 and again in 1981, suggest that children from high-stress, intact families are more likely to be depressed, impulsive, hyperactive, and misbehaved than children from divorced families.

While it is true that children of divorce often run higher risks for problems, that doesn't mean that problems are in any way a foregone conclusion. Hence, one national study found that 25 percent of marriages of women who had lived with only one parent at age 14 had been disrupted. The figure for those living with both parents at age 14 was 14 percent. Similarly, white children living with single parents may have a high-school dropout rate as high as 22 percent, compared to 11 percent for those from two-parent households. The single-parent figures are sharply higher, but they also suggest a wide range of response to parental breakup. While there is no question that divorce causes pain, suffering, and difficult adjustments for children (and parents), it's far from clear that it constitutes a "blight."

Whitehead's analysis of the roots of contemporary divorce rates is similarly overstated. "The deeper logic of expressive divorce was the logic of capitalism," she writes. "Just as...the market called upon the owner of capital to maximize resources, so the expressive ideology of divorce urged the proprietor of psychological capital to do the same." This line of thought degenerates at various points into a clichéd and unsupported broadside against contemporary society: "The entire ethos of the American workplace has shifted toward a short-term, performance-based, limited-benefits, ten-career-changes-in-a-lifetime model," she writes. "Increasingly...the workplace rewards individuals who are mobile, unattached, unrestricted by family commitments."

Beyond wildly exaggerating the "ethos" of the contemporary workplace—and ignoring the fact that the workplace has *always* rewarded people who put their jobs first—such an interpretation fails to engage a much more complicated relationship between marriage and large social and economic shifts over the past century. As Ludwig von Mises wrote 75 years ago, the modern marriage that "takes place at the desire of the husband and wife" and in which "the rights of the husband and wife are essentially the same" is the result of granting both men and women the right to contract, itself based on notions of self-ownership embedded in "the logic of capitalism." Marriage as a mutual agreement heightens the possibility of divorce.

So does the shift toward an industrial (and service) economy in which women's work opportunities outside the home tend to increase dramatically. Most economists and sociologists agree that increased female participation in the paid work force is one of the—if not *the*—major factor in the rise in divorce rates. In 1940, about one in seven married women were working or looking for work. Fifty years later, the figure was closer to 70 percent. Perhaps the most dramatic increase occurred among women with children under 6: While less than 10 percent of such women worked in 1940, about 60 percent were on the job in 1990. As Richard Posner suggests in *Sex and Reason* (1992), a wife's "improved job opportunities" and "increased economic independence" help to make divorce a possibility, even as they mitigate the impact of divorce, abandonment, or widowhood.

Our society's relative wealth and its emphasis on mutually fulfilling marriages make it likely that divorce will remain a prevalent phenomenon. The "logic of capitalism" turns out to be a tough little conundrum: It gives us the opportunity to get what we want and the opportunity to walk away from it, too.

That puzzle may explain why Whitehead's policy proposals are so modest. Refreshingly, rather than some large-scale governmental intervention, she calls for changing "the way we think about... divorce, especially divorces involving children." Whitehead espouses "divorce prevention" plans enacted by therapists, lawyers, scholars, and clergy that would highlight the costs—especially to children—of divorce. Her book, of course, can be seen as one voice in this conversation, which it seems to me is already well under way. Indeed, her claim that "we are still reluctant to speak about the moral obligations involved in divorces with children" is belied by widespread discussion of "deadbeat dads" and irresponsible parenting. Such cultural debate is particularly meaningful when it comes to marriage, where folkways generally precede laws. For instance, contrary to the blame heaped on no-fault divorce laws, the surge in divorce began before no-fault statutes were on the books. Whatever *The Divorce Culture's* failings, it doesn't compound them by unveiling a federally mandated 12-step plan to succor a particular version of the family.

The same cannot be said for Dana Mack's *The Assault on Parenthood.* If Whitehead proposes solutions largely rooted in civil society, Mack wants to bring in the Marines to enforce her version of marital law. Mack, who is affiliated with the Institute for American Values, is no fan of "rampant divorce," but she issues a broader indictment than Whitehead. Citing juvenile crime rates, declining SAT scores, and feelings of parental impotence, Mack stresses "the sudden and rapid decay of those stable social values that once fostered a protective culture of childhood." That most indicators of children's well-being suggest things are getting better for most kids does not trouble her analysis. (See "Child-Proofing the World," June.)

For Mack, the family is being undermined simultaneously by marketplace values *and* government intervention. Indeed, government at all levels is the main villain in Mack's analysis, a Kafkaesque overlord who has made it virtually impossible to raise kids who don't bring guns to schools, engage in early sex, or talk back to their elders. For Mack, the failure of government is twofold: When it is not actively infringing on "parental rights" by forcing condoms on students or prosecuting parents who dare to spank their wards, the government is turning a blind eye to the "gratuitous vulgarity" of pop culture or allowing "childless working people" to pay less than what she says is their fair share of taxes.

On one level, Mack's book is a compilation of scare stories illustrating how government policies are bad to begin with or have horrific unintended consequences. Few of these stories are original with Mack: She repeats, for instance, part of Hannah Lapp's February 1994 REASON story, "Child Abuse," which details how child-protective services can run amok. That Mack adds little to these tales does not mitigate their seriousness or outrageousness, but on those counts, her book offers little new to readers.

The Assault on Parenthood is more interesting—though less convincing—when Mack shifts to public policy proposals. After discussing at length just how incompetent—if not downright evil—government is when it comes to domestic matters, she hauls out a savior to rescue the dying family: the government. In her final chapter, she lays out "exactly what government can and should do for families." As with most such interventions, Mack's plans are designed to foster not competition but a particular outcome—in this case, a two-parent household in which the wife stays home with the kids (children in particular do not seem to be optional).

First on Mack's wish list is tax relief. "Family-friendly" tax reform would include higher per-child deductions and "significant reductions" in payroll taxes for parents. Mack's brave new IRS would countenance little opposition from "free-riders" such as retirees and childless workers. "If childless working people resent a larger tax burden, they should consider who will be working to pay their Social Security...and medical bills in the coming decades," she writes. Curious logic in a book that touts personal responsibility as a virtue: Why exactly should someone who chooses not to have children be forced to pay for someone else's family? (And, while we're at it, why should the government, rather than families, take care of people in their old age?) Mack ignores the school taxes childless couples and retirees pay and has no comment on the marriage penalty on two-income households.

"Work relief" also looms large in Mack's proposals, and represents another way of pushing the cost of children onto others. She favors affirmative action for parents and a law that would give mothers three months' paid leave and hold their jobs for up to a year. "Why should parents

be required to do it all at once—that is, work and rear children at the same time—while most senior citizens have neither work nor child-rearing responsibilities?" she asks rhetorically at one point. Why indeed? For starters, parents are not required to do anything—especially become parents in the first place. And most senior citizens (many of whom undoubtedly spend time with grandchildren) have already been there and done that.

Her policy prescriptions—such as allowing the government to "penalize" broadcasters if more than half of their output fails to meet her idea of "PG standards of quality and decency"—are predicated upon vague yet doctrinaire notions of consensus and the common good ("Children are our most important investment in the future"). They culminate in a call for a "Parental Rights Amendment," preferably one that reads, "The right of parents to direct the upbringing and education of their children shall not be infringed." Certainly not by childless couples or retirees who will finally be paying their fair share of taxes. Or, one assumes, by children themselves, whose position under such a regime is left unclear. Mack grants in passing theoretical limits to parental rights, but those limits are of the utmost importance: Would, say, exposure to competing ideas about child rearing be considered an infringement on parental rights? Given Mack's obvious preference for one type of family, it's clear that any such law would be a blunt instrument used to club dissenters into line.

Like *The Divorce Culture* and *The Assault on Parenthood, She Works/He Works*, by Rosalind C. Barnett, a psychotherapist affiliated with Radcliffe College, and Caryl Rivers, a journalism professor at Boston University, stumps for a particular vision of "the family." Hence the subtitle: *How Two-Income Families Are Happier, Healthier, and Better Off.* Better off than whom? Single-income families, especially those with a stay-at-home mother. The authors are convinced that their family model is self-evidently superior to any other, and they marshal an array of data to support their titular claims. (Just as conservatives cannot bring themselves to believe some women enjoy working, liberals seem incapable of believing some women want to stay at home.)

Unlike either Whitehead or Mack, though, Barnett and Rivers have revealed preference on their side: By 1990, the authors note, 40 percent of families had full-time working husbands and wives (up from 32 percent in 1980); about 60 percent of all married couples have two-earner incomes. "Traditional" families with a "breadwinner" father and a stay-at-home mother comprise less than 3 percent of American families.

She Works/He Works is interesting for two basic reasons. First, it explores some of the adaptive functions of changing family structures. Drawing on a National Institutes of Mental Health-sponsored study conducted by Barnett, the authors suggest that "the dual-earner family offers economic stability, protection against financial disaster, and often offers both adults and children a close-knit cooperative family style in which all members take an active part in keeping the household running."

The Assault on Parenthood is more interesting—though less convincing—when Dana Mack shifts to public policy proposals. After discussing at length just how incompetent—if not downright evil—government is when it comes to domestic matters, she hauls out a savior to rescue the dying family: the government.

They argue that the "collaborative" style—in which spouses share household tasks and responsibilities—common in two-earner households might lead to increased interdependence, not fragmentation. (One sign of this is the steady increase in traditionally female household duties performed by men.) While such claims have a ring of truth, they remain highly arguable, especially when it comes to divorce.

Barnett and Rivers present a convincing rebuttal to Mack's claim that women don't really want to work and that parents "say that...pressures on women to work are killing family life." For instance, research from a variety of sources, including a national longitudinal study, shows mothers who work outside the home report better physical and emotional health than their nonemployed counterparts. Apparently, such gains do not come at the expense of children. A meta-analysis of 14 studies of maternal bonding in children attending day care (the normal situation, one assumes, for kids with working mothers) and children reared at home found no difference between the two groups. As interesting, studies consistently show that working mothers spend as much time as their nonworking counterparts in direct interaction with their kids.

The second notable aspect of *She Works/He Works* is its refusal to indulge in even implicit utopianism about the family. Barnett and Rivers constantly chart the success of their "new family" in relative, realistic measures. "No family style plays out on one vast plain of joy and light," they write. "No lifestyle offers nirvana." Such realism is particularly welcome, and it extends to their discussion of larger social and economic forces affecting the family. Although the authors are clearly conventional liberals, they seem very much at home in a world characterized by creative destruction: "Change is the way of the world; it is in the nature of things for the old ways to die and the new to be born." Even as they call on "the corporate culture" to accommodate two-income families, they acknowledge change is already under way.

Where *The Divorce Culture* and *The Assault on Parenthood* see in social change only the end of something, *She Works/He Works* charts a more interesting and ultimately more relevant path: how social institutions change, evolve, and grow over time to meet the needs of the individuals who make them up. As any number of technologies—including those affecting work, home, fertility, and health—proliferate and give people more and more choices in how to structure their family lives, recognizing and understanding that process will become all the more important.

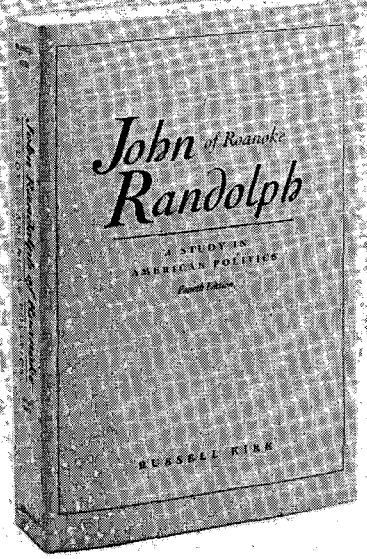
Nick Gillespie (ngilles123@aol.com) is a senior editor of REASON.

Modern Editions of Classic Works for Today's Readers

John Randolph of Roanoke
A Study in American Politics

Fourth Edition

By Russell Kirk



This new fourth edition of a classic political biography incorporates the revisions provided by Russell Kirk shortly before his death in 1994. Included is a transcription of the first-hand account of Randolph's death that confirms information that historians have deemed apocryphal. Unique in the annals of American political history, John Randolph (1773–1833) was only twenty-six when he was elected to Congress in 1799. Rapidly he became the most forceful figure at the Capitol—and also, in the words of Dumas Malone, "a merciless castigator of iniquity."

For most of his public career Randolph was a leader of the opposition, first to Jeffersonians, later to Federalists. Never before—nor since, in fact—has there been in American life so colorful and so principled an opponent to national mischief, nor so fiery an orator. Randolph was, Kirk writes, "devoted to state rights, the agricultural interest, economy in government, and freedom from foreign entanglements." Perhaps the quintessence of Randolph's eminently American credo is found in his famous declaration, "I love liberty; therefore I hate equality!"

594 pages. Prefatory note, appendices, Randolph chronology, select bibliography, index.

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Fading Colors

By Drew Clark

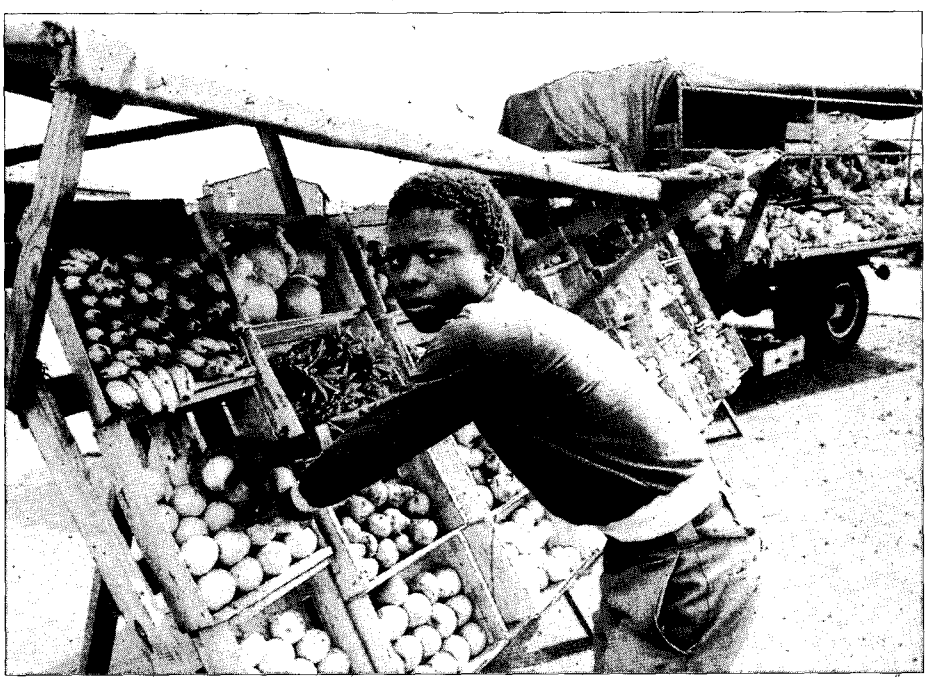
Anatomy of a Miracle: The End of Apartheid and the Birth of the New South Africa, by Patti Waldmeir, New York: W.W. Norton, 303 pages, $27.50

In the year leading up to F.W. de Klerk's declaration on February 2, 1990, legalizing the South African Communist Party and the African National Congress and freeing Nelson Mandela, socialism in South Africa looked forward to a bright future.

Never mind that apartheid's strongest supporters—from its implementation in 1948 onward—were found not among wealthy English-speaking capitalists but among poor and unskilled Afrikaners who felt their jobs were threatened by Africans and mixed-race "coloureds." Never mind that the sharpest broadsides issued against the National Party's increasing racial authoritarianism in the 1960s and '70s came not from black militants but from a grandmotherly Jewish lady, Helen Suzman, whose avowedly free-market political base resided in Johannesburg's wealthy northern suburbs. Never mind that in the tumultuous 1980s, among the first landlords to skirt segregation laws weren't shadowy fly-by-night real estate brokers, but the Anglo-American Corporation, a conglomerate with the dominant position in the country's principal stock exchange.

The perception that capitalism was in cahoots with apartheid made it seem as though South Africa's "mass democratic movement" of the late 1980s was in the vanguard of the (communist) revolution. The governing National Party fed this fear, taking out full-page newspaper ads declaring that "Free Enterprise is Working" in 1989, a time when Africans, coloureds, and Indians still could not legally buy property in most of their country.

Yet while conventional political labels like *liberal* and *conservative* have always seemed anomalous in South Africa, the events of the past decade have decisively settled a once-open question: Were racial or class divisions at the heart of the country's dilemmas?



A South African street vendor: The country's ultimate fate—the fabric of its society, economy, and civic institutions—will rest not with politicians but with individuals making free choices. Apartheid's incompatibility with a free economy and free society was ultimately far more instrumental in bringing it down than were either F.W. de Klerk or Nelson Mandela.

In her book *Anatomy of a Miracle*, journalist Patti Waldmeir shows that apartheid was indeed a misunderstanding between races. Africans and Afrikaners were not really so different. Each desired freedom and prosperity. When blacks and whites would finally sit down and negotiate their differences on equal terms, it could be done without dire and tragic repercussions.

Traditionally, South Africa's classical liberal historians saw racial animus as the root cause of the dilemma in which the ruling white minority found itself in February 1990. Radical historians saw white capital holders as the chief villains, creating disparities in wealth between rich and poor. The fact that a relatively free economy and multi-party democracy exist within the post-apartheid state unmasks the error of viewing South African history through the lens of class struggle.

Yet when Nelson Mandela walked free from the grounds of the Victor Verster Prison on February 11, 1990, and delivered his first public speech in more than 27 years, he embodied the threadbare mantras of socialism. Filled with incendiary language, talk of intensifying the armed struggle, and ringing defenses of the South African Communist Party, Mandela's speech pegged him as the revolutionary that the government had tried to depict him as for decades.

First impressions can be deceptive, however, as Waldmeir notes in her reporting on this incident. The next morning, Mandela appeared to reporters at the garden of Archbishop Desmond Tutu.

"The ANC is very much concerned to address the question of the concerns of whites," she quotes Mandela as saying. "They insist on structural guarantees to ensure that...majority rule does not result in the domination of whites by blacks. We understand that fear. The whites are our fellow South Africans. We want them to feel safe."

While some would argue that South Africa's new constitution does not prevent majority domination and that whites do not feel safe in a country where the rate of crime against whites is drawing closer to the rate of crime against blacks, the "miracle" that Waldmeir describes is not an oc-

casion for churlishness or cynicism. Indeed, one of the great strengths of *Anatomy of a Miracle* is that the author gives credit to each of the parties involved without telling the story of the new South Africa as a fairy tale. An American reporter for London's *Financial Times* in both Zambia and South Africa, Waldmeir writes this history without straining the reader's patience or credulity.

And notwithstanding the rediscovery of common interests by all South Africans, the events leading to the peaceful transfer of power from the National Party to the African National Congress are remarkable on both ends of the transition. Waldmeir was beaten to the punch by two books whose authors were somewhat closer to the events at hand, former *Rand Daily Mail* editor Alisdair Sparks's 1995 *Tomorrow Is Another Country* (a sequel to his excellent 1990 history, *The Mind of South Africa*) and Nelson Mandela's own 1994 *Long Walk to Freedom*. Waldmeir puts a new spin on many of the choicest anecdotes from these two books and insists on looking at the sometimes not-so-pure motivations of Mandela, de Klerk, and other players.

In spite of a relentlessly fascinating subject that keeps the reader pressing forward to know more, *Anatomy of a Miracle* struggles at first to find its footing. Attempting to tell us something about F.W. de Klerk and his role in presiding over apartheid's demise, Waldmeir sketches two scenes in which military airplanes play the starring role. One is a celebration of Republic Day in 1966, on the anniversary of South Africa's independence from Britain and at a time when the Afrikaner seemed invincible. The other, on May 10, 1994, marks the moment that the vanguard of the country's air force tipped its wings to their new commander, Nelson Mandela, with deputy president F.W. de Klerk at his side.

These illustrations, meant as teasers, are more of a distraction. With it comes Waldmeir's annoying habit of inserting herself into her story—to ask a question here, to tell about her sleepover at a black family's "matchbox house" in Soweto there—as if to prove her bona fides. Mercifully, these interjections are confined to small chapters between installments of the book's central drama, the negotiations between the National Party and the African National Congress.

It is a story that Waldmeir tells well. Through a progression of chapters that logically unfold, she centers the reader's attention on the major events and struggles leading up to the peaceful transition of power. Each is so gradual and such a natural extension of previous developments that one can easily forget just how remarkable were these 10 years for resolving the fundamental problem of race-based government in South Africa.

Perhaps the ease with which a new South Africa could be born was obscured by the National Party's own censorial policies. Ever since the ANC was banned in the 1960s, the public was denied the opportunity to understand its views. The ANC's tactical alliance with the Communist Party was blown out of proportion by government propagandists and by the Suppression of Communism Act, which made it a crime to advocate any doctrine that promoted "political, industrial, social or economic change within the Union by the promotion of disturbance or disorder."

The continual public and secret meetings between ANC leaders and many of the country's most prominent white citizens, both English-speaking and Afrikaner, were a key element in disproving the propaganda about each other that both sides had started to believe.

Hence the number of people who truly understood the evolving views of someone like Nelson Mandela was limited to less than a handful. The masses of apartheid opponents were kept in the dark as much as the majority of apartheid's supporters. Mandela's words and even his countenance were banned—which made it possible, incredibly, for his jailers to take him on tours around Cape Town in the late 1980s to begin to acquaint him with the world from which he had been isolated since 1964.

Waldmeir makes evident not only the extent of the government's contact with ANC leaders in exile but also the relief they felt in learning that the ANC did not fit their own stereotypes. When Seretse Choabe and Thabo Mbeki, two exiled ANC leaders, met with Pieter de Lange, chairman of the Afrikaner Broederbond secret society at a 1986 meeting sponsored by the Ford Foundation in New York City, Choabe at first threatened to kill de Lange. Yet after the meeting, as they were preparing to leave, Choabe embraced a startled de Lange and apologized. "He said, 'Remember it's our children dying in Soweto,'" de Lange recalls, still moved by the memory of Choabe, now dead. "And I said, 'I know that,' and we left."

Indeed, the continual public and secret meetings between ANC leaders and many of the country's most prominent white citizens, both English-speaking and Afrikaner, were a key element in disproving the propaganda about each other that both sides had started to believe. Willie Esterhuyse, an Afrikaner academic recruited by the National Party to meet with ANC officials, said, "Interacting with people like Mbeki made me realize that this country has a pool of leadership which is not defined by a color, the color white or the language Afrikaans."

Those contacts began under P.W. Botha, South Africa's head of state from 1979 to 1989. A cantankerous and disagreeable man, Botha nevertheless lectured his Afrikaner constituents that they must "adapt or die." Botha's decision to press forward with a tricameral parliament (one chamber each for whites, coloureds, and Indians) ultimately led right-wing whites to defect into a Conservative Party, and it enraged blacks who saw his move as an attempt merely to modernize apartheid's nonrepresentative government.

Botha ended the Mixed Marriages Act and the Immorality Act, which forbade interracial marriage and sexual relations, and he ameliorated the pass laws, among the sharpest infringements upon blacks' freedom of movement. Waldmeir goes so far as to call Botha a "revolutionary...who

prepared the Afrikaner mind for change."

But if he took his people to the Rubicon, he could not build a bridge across. During the build-up to a famous speech in 1985, Botha appeared almost ready to take bolder actions, such as lifting the Group Areas Act and releasing Mandela. But one of this book's great unanswered questions is why, at the last moment, he shrank from the task and used his international audience to hector the West for not giving him proper credit for his reforms.

Credit for South Africa's radical reform must ultimately reside with Botha's successor, F.W. de Klerk, who took courage in the fact that the decline of communism in late 1989 also diminished the threat the ANC represented to whites. He began signaling his intentions as early as September 1989, his first month as state president, when he permitted an ANC rally in Cape Town. "We cannot have a democracy without protest marches," he said to his own security forces. De Klerk kept his own counsel when it came time for his maiden speech to the last white parliament—he has refused to reveal his thought processes even to his closest friends—and deliberately downplayed suggestions of change in order to maximize the public relations benefit of his bold move.

Despite the honeymoon-like atmosphere enveloping the National Party and the ANC in the months following the unbanning, problems soon erupted over black violence in the townships. Rumors that white security officials had blackened their faces and fought alongside soldiers of KwaZulu Chief Mangosuthu Buthelezi against ANC-allied forces in the townships poisoned relations between the National Party and the ANC over the next two years.

Waldmeir unravels some of the groundless exaggerations and conspiracy theories that influenced ANC allies and even caused Nelson Mandela to chastise de Klerk for inattention to black deaths. Yet by the time of the country's "darkest hour"—the July and September 1992 massacres at Boipatong and Bisho—the momentum for a negotiated solution forced the National Party and Inkatha supporters to eventually agree to what was essentially an ANC proposal for majority-rule democracy. And an 11th-hour power bid by the white right wing showed them to be a mere shadow of their fierce image.

What *Anatomy of a Miracle* doesn't do, however, is to suggest that there is more to the changes in South Africa than what politicians (of whatever color) have been able to negotiate. Waldmeir, for instance, puts her finger on the best explanation yet for Buthelezi's erratic and imperious behavior—that he was deprived of love and attention in his royal household. But she doesn't take his demand for federalism seriously. Apartheid's unfortunate (and ultimately unsuccessful) linkage to capitalism has also affected federalism—and it has not escaped so easily. ANC and Communist Party member Joe Slovo, "speaking freely out of exhaustion and drink on the eve of the deal, insisted the new state would be 'not *remotely* a federation.... We've managed to give them devolution, without losing control.'"

Buthelezi's ethnic Zulu power base in Kwazulu-Natal gives him a political stake in moving power to the provincial level. But there are those who see a radical decentralization of governmental authority —coupled with a strong bill of rights—as the only way to avoid the ethnic spoils system that has plagued nations with "winner-takes-all" elections. That there might be arguments for federalism on grounds of principle seems to escape Waldmeir's attention.

South Africa's ultimate fate—the fabric of its society, economy, and civic institutions—will rest not with politicians but with individuals making free choices. Apartheid's incompatibility with a free economy and free society was ultimately far more instrumental in bringing it down than were either de Klerk or Mandela, as important as were their respective roles as South Africa's "Abraham Lincoln" and "George Washington." Now that the Afrikan tribe is out of power, they and many other of their South African countrymen are beginning to think beyond politics. One can hardly imagine a more promising development than that.

Drew Clark (drewclark@aol.com) lived in South Africa from 1988–89, where he worked as a reporter for the Weekly Mail Guardian *of Johannesburg.*

It Didn't Begin with *Sesame Street*

By Jesse Walker

Public Radio and Television in America: A Political History, by Ralph Engelman, Thousand Oaks, Calif.: Sage, $55.00/$24.95 paper.

Among Beltway power brokers, public broadcasting means PBS: multicultural muppets, a soporific newshour, and a perpetual Three Tenors concert. (Why *three* tenors? Is that supposed to make the show three times as good? A friend suggests that PBS has embraced the Universal Studios Principle: If Dracula, Frankenstein, and the Wolf Man were scary in their own movies, they'll be *really* scary together.) Sometimes someone will remember National Public Radio, domain of *Some Things Considered* and Terry Gross, the rich man's Arsenio. But that's pretty much it. As far as policy makers are concerned, PBS and NPR represent the sum total of noncommercial broadcasting in the United States.

That's one reason to appreciate Ralph Engelman's *Public Radio and Television in America: A Political History.* Engelman served on the national board of Pacifica, America's oldest noncommercial radio network, from 1973 to 1979. Perhaps because of that background, he is more attuned than most writers to public broadcasters who do not fit the standard NPR/PBS mode, such as independently licensed community radio stations or public-access channels on cable TV.

For Engelman, "public" refers not just to state subsidies but to citizen participation—not just to city hall but to town square. "A fundamental distinction," he writes, "emerges between *federal* and *community* forms of public radio and televi-

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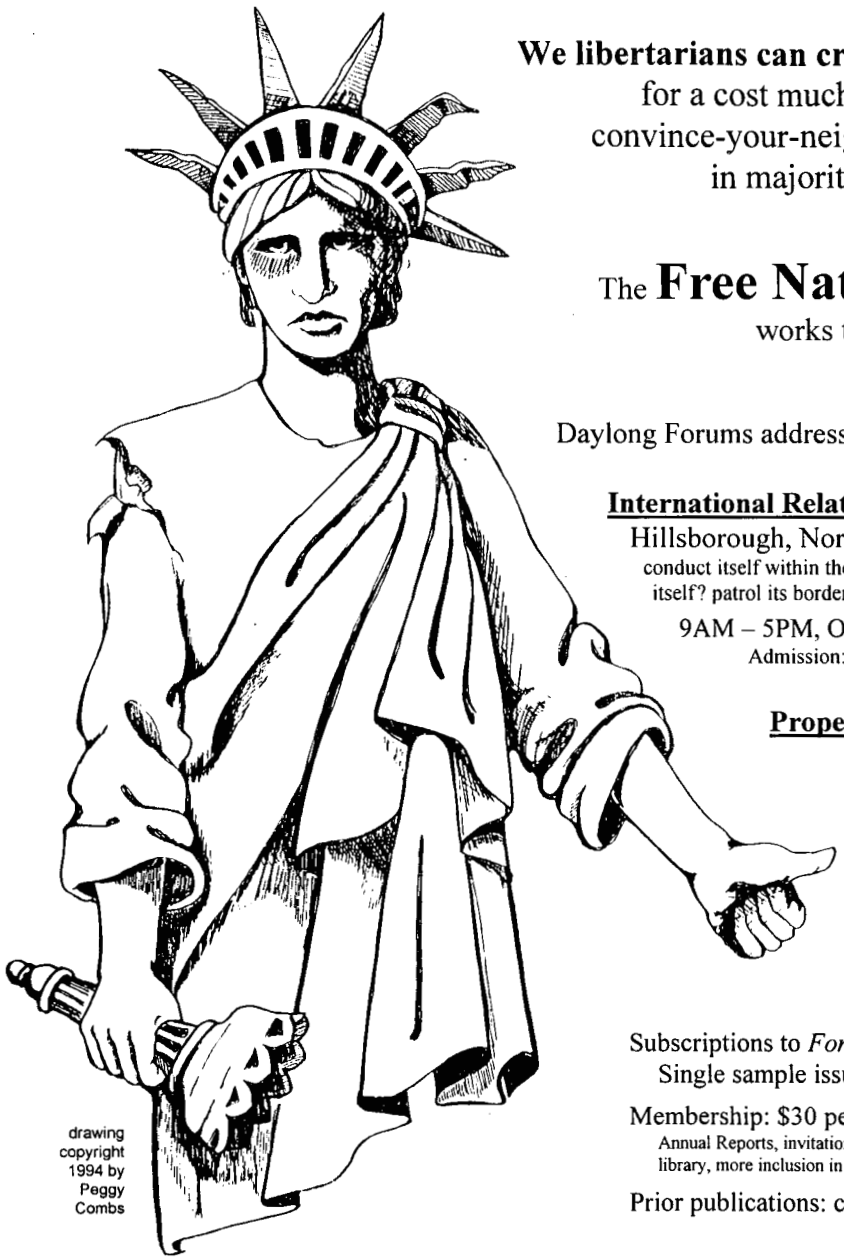

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sion, with the former rooted in the Public Broadcasting Act of 1967, the latter in more decentralized and participatory processes." His book aspires to be the story of both brands of broadcasting—not a path-breaking history rich with primary research but a synthesis of the many books and articles that preceded his.

His book is also, one gathers, an attempt to defend these stations against the alleged Threat From The Right, i.e., Republican politicians' now-dormant efforts to defund the Corporation for Public Broadcasting. This seems odd, as his account actually suggests that government money has been as likely to curb good noncommercial broadcasting as to nurture it. Again and again, federal funds have transformed genuinely grassroots stations into ratings-driven, "professional" outlets. But Engelman repeatedly lapses back into conflating the public sector and the public sphere. For Engelman, however flawed PBS and NPR may be, they are "public" institutions worth preserving. Profit-seeking businesses, he implies, could never create anything comparable.

That is nonsense. Talk radio, at its best, is the local, participatory platform for exchanging ideas that NPR no longer even aspires to be. Anyone who doubts this need only scan through the AM band on a Sunday afternoon. The last time I did, I heard citizens debating the proper direction of their school district, relying on personal experience rather than ideological cant. I heard state legislators fielding calls about pending bills, forced by the format to answer in more than soundbites. I even heard a rabbi debating some Randites over the existence of God. The best talk radio has a vitality that most NPR programming lacks.

Still, Engelman is happy to describe public broadcasting that takes place outside the state, even if he draws the line at embracing the business sector. He notes, accurately, that broadcasting was invented not by businessmen but by hobbyists: the grassroots network of amateurs who were jockeying discs and covering sports back when both government and corporations assumed radio would be used only for point-to-point communication. Unfortunately, Engelman doesn't describe the amateur ether in detail. Instead, he passes along a few quotes from Susan Douglas's *Inventing American Broadcasting* (arguably the best history of the medium ever written) and other sources, then hurries on.

This is a loss. The ham subculture of the 1910s bore a striking resemblance to Bertolt Brecht's later demand for a radio system that "knew how to receive as well as transmit, how to let the listener speak as well as hear, how to bring him into a relationship instead of isolating him," one that would "step out of the supply business and organize its listeners as suppliers." The difference is that the socialist Brecht believed that "only the State can organize this." The early amateurs, by contrast, were a spontaneous, self-regulating subculture that emerged without the state's support or affection.

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What does this have to do with the Three Tenors? Not much. Engelman's "fundamental distinction" between federal and community broadcasting seems more like a giant canyon.

Community radio—independently licensed, listener-sponsored, volunteer-run stations not married to any narrow programming format—was born in 1946, when Lewis Hill founded the Pacifica Foundation. Hill, a pacifist, had come to reject the state as an innately violent institution; he had dreamed up his radio project during World War II, while interned in a labor camp for conscientious objectors. Imbued with this anarchism, the first Pacifica station—KPFA-Berkeley, launched in 1949—received no support from any level of government. In an unconscious echo of the hams' do-it-yourself ethic, KPFA relied on its listeners for money and on community volunteers for labor.

In the 48 years since, Pacifica has become known for broadcasting diverse and interesting music, serious radio drama, and, especially, political dissent. Engelman relates this history in considerable detail, though he treads lightly when discussing the original Pacificans' politics. Suspicious of both communists and liberals, the young station was far friendlier to the likes of anarchist poet Kenneth Rexroth than to, say, one-time Progressive presidential hopeful Henry Wallace. It's moved in several different directions since 1949, some more worthy than others; these days it's little more than a leftier version of NPR. (It also takes in over $1 million a year from the federal government, a far cry from its early independence.)

Engelman's brief biography of the network is useful as far as it goes, though he prefers to ignore his subject's recent problems, proclaiming instead that it "remains unique in its commitment to sustain an independent, critical, and oppositional public sphere on the broadcast spectrum." (Yes, he really writes like that. A professor of journalism, Engelman at his worst combines the clear prose style of the academy with the intellectual precision for which we reporters are renowned.)

Fortunately, the idea of independent noncommercial radio survived Pacifica's decline. In 1962, a stray KPFA volunteer named Lorenzo Milam founded a new station, KRAB, at the high end of Seattle's FM band. His inspiration and expertise—and money—helped launch more outlets, the so-called "KRAB Nebula," around the country. Federal grants came only later, along with funding guidelines that often undermined the stations' volunteer-based, community-oriented character.

Engelman's history of community radio strikes me as the weakest section of his book—a bad sign, since it's also the topic that I know the most about. He lavishes almost all of his attention on Pacifica, devoting less than two pages to the KRAB Nebula and scarcely more to the National Federation of Community Broadcasters. He barely touches the recent, Corporation for Public Broadcasting–sponsored efforts to "professionalize" community stations by increasing paid staff, reducing volunteers' power, and adopting more mainstream programming. The micro radio

movement—illegal low-watt stations often formed in explicit rebellion against these new controls—is not mentioned at all. (See "Don't Touch That Dial," October 1995.) And sometimes Engelman's facts are out of date. Citing a 1990 source, he describes WORT in Madison, Wisconsin as "at the commercial end of community radio." That was true then but is no longer so today.

Still, Engelman tells enough for readers to see the basic differences between community radio and public TV. The former is a pluralistic movement built by many different people in many different places, from the ground up. The latter was invented by a handful of would-be social engineers at the Ford Foundation in the 1950s. Educational television, they declared, could be a force for social uplift, "an instrument for the development of community leaders," even "a form of psychotherapy." Their money and lobbying skills created a small network of public TV stations over the next decade, building an infrastructure that would begin receiving a few federal dollars in the early '60s and a lot more after 1967.

That's the year Congress created the Corporation for Public Broadcasting. The CPB was launched at the recommendation of the Carnegie Commission on Educational Television, a nominally independent panel that was in fact largely directed from the Johnson White House. CPB and PBS were supposed to be independent institutions shielded from government influence. In actual practice, they're federal bureaucracies run by political appointees, as susceptible to political pressure as any other part of official Washington.

At PBS, even demands for decentralization often come from above. Richard Nixon distrusted the network, believing—rightly—that it was biased toward the Eastern establishment. So in 1971, Clay Whitehead, head of the White House Office of Telecommunications Policy, tried to weaken the national network by calling for a "return to localism." It was an odd choice of words: How could public TV "return" to an arrangement it had never enjoyed? The ultimate result was not to decentralize or defund, but to neuter. PBS's commitment to controversial programming, already weak, softened even further after the Nixon attack. (Despite its radical reputation, PBS seems less committed to socialism than to the British class system.)

If community radio is noncommercial broadcasting at its most decentralist and anti-bureaucratic, and if PBS represents the other extreme, NPR falls somewhere in-between. Like community radio, educational radio emerged without federal direction: Some schools were sponsoring stations even before World War I, and dozens were born in the 1920s. Unlike community radio, these stations were, to judge from historical accounts, spectacularly dull—"pap for the intellectual masses," in Lorenzo Milam's words. You won't get this impression from Engelman's book, which prefers stressing the stations' allegedly populist roots over describing the enervating lectures that made up their usual programming.

At any rate, the foundations that created PBS weren't interested in radio, and the Public Broadcasting Act of 1967 would have ignored the medium altogether were it not for some last-minute lobbying by the National Association of Educational

Ralph Engelman lets readers see the basic differences between community radio and public TV. The former is a pluralistic movement built by different people in different places, from the ground up. The latter was invented by a handful of would-be social engineers at the Ford Foundation.

Broadcasters. The result was NPR, founded with CPB cash in 1970. It was William Siemering, the innovative manager of SUNY-Buffalo's WBFO-FM, who conceived the new network and its flagship program. The original *All Things Considered* plan called for news reports from public stations around the country, with the Washington offices serving more as a clearinghouse than as a command center. Instead, NPR became yet another centralized institution run by political appointees, especially after Siemering was fired as program director in 1972. By 1993, things had gotten to the point where the head of the CPB could seriously call for merging NPR with the Voice of America.

Competition from a rival network—American Public Radio, recently renamed Public Radio International—hasn't reversed the trend toward centralization. In 1987, Engelman notes, 60 percent of public radio programs were locally produced. Today, the ratio tips the other way. Meanwhile, most NPR and PRI programs are upscale and middlebrow, broadcasting hour after hour of candy-coated brie. It's hard to see how one can call this arrangement "public," unless one's only criterion is a heavy influx of public dollars.

Earlier this year, KPFK (Pacifica's Los Angeles outlet) canceled a program called *Music of the Americas*. The show, whose music ranged from Dixieland to film scores to contemporary experimental compositions, was "too arcane and challenging," station manager Mark Schubb told the *Los Angeles Times*. Thirty years ago, it would have been unheard-of for a Pacifica station to drop a show for such a reason. Today, it's par for the course.

Schubb also killed the *Opera Show*, a Sunday-morning fixture for 26 years. Like *Music of the Americas*, the *Opera Show* didn't limit itself to spinning records. Host Fred Hyatt interviewed guests, offered informed commentary, and sometimes went beyond the traditional boundaries of opera—all the way out to *The Pajama Game*. The problem wasn't the show's quality, Schubb explained; it was the ratings. "All that matters is coming up with matching funds," Hyatt complained to the *Times*. "And now, they're really punching the so-called multicultural thing. It's all very cynical."

Supposedly, government money was going to protect noncommercial stations against the Vengeful God Arbitron. It hasn't work out that way. Engelman's book would be much better if he spent a little more time wondering why that might be so.

Jesse Walker (jwalker@w-link.net) is media editor of The Seattle Scroll. *He is writing a history of the micro radio movement and its historical predecessors.*

Planet Reich

Thanks for the memoirs

By Thomas W. Hazlett

In former Secretary of Labor Robert Reich's *Locked in the Cabinet*, self-interested bozos berate an intellectually honest cabinet member who is concerned about the growing gap between rich and poor. Our hero, undaunted, zips through Washington championing the plight of the American worker. I walk with the power brokers, says Reich, but I really remain just one of the little people.

As keen scholars of public affairs are aware, Reich's acts of heroism exist mostly in his own head. Jonathan Rauch astounded readers of *Slate* with overwhelming evidence that Reich manufactured whole fantasy scenes. For instance, Reich has Rep. Jim Saxton (R-N.J.) bellowing over the administration's minimum wage proposal: "Where did you learn economics, Mr. Secretary?" and "Evidence! Evidence!" Rauch checked that version against a C-SPAN tape of the event and was "flabbergasted": "Saxton," notes Rauch, "was, in fact, decorous and polite. He did not jump up and down; he did not impugn Reich's education; he did not shout 'Evidence! Evidence!'...Reich has replaced a dull, earnestly wonkish hearing with a Hollywood script in which a mean Republican hammers a decent Democrat."

Fair enough—for inside the Beltway. But the story gets so much better when we consider Reich's rejoinder to Rauch. Was Reich: a) embarrassed; b) apologetic; c) defensive; or d) all of the above? The answer: *none* of the above! To be sure, Reich allowed that he made his points by making up quotes. But that's not a problem, Reich suggested calmly.

"I *felt* [Saxton's] hostility," he told *Slate*. "Look, the book is a memoir. It's not investigative journalism." Regarding Reich's rendition of statements made at the minimum wage hearing, Rauch asked, "Did you just make them up?" Reich shot back: "They're in my journal."

Thus, the C-SPAN videotape is inferior to Reich's personal diary as a source. What Reich *perceives* to be happening is far more important than what actually does happen.

While Reich has been scolded and ridiculed by some in the press for his Walter Mitty tendencies, the brilliantly focused mental CAT scan which Reich's behavior illuminates has yet gone unexamined.

To wit: What is the appropriate response when a prominent member of our government perceives things that just don't happen? People said one thing to Secretary Reich, and he, by his own boastful admission, heard something quite different. When someone is haunted by strange voices and imagines elaborate scenarios that turn out to be dream sequences, is he really the right choice for a leadership role in the organization? When a person sneeringly refers to examination of the factual record of a congressional hearing as "investigative journalism," is he qualified for a cabinet post?

A second question arises from the high esteem yet attached to the daydreaming Reich. Once upon a time, he so impressed our president that his *The Work of Nations* was credited with forming the intellectual backbone of the 1992 Clinton campaign. A certified Friend of Bill, Reich went into Labor for four long years.

Before rising to cabinet rank, Reich was a guru of the highest standing. He taught at Harvard's prestigious Kennedy School of Government and generated $347,000 in lecture fees in 1992. The author of six well-received books of political economy, he was a regularly scheduled talking head and a frequent contributor to the nation's leading newspapers and magazines. He was a contributing editor of *The New Republic*.

On this last count, I was stunned to read what his fellow *New Republic* editor, Mickey Kaus, wrote in a *TNR* cover story back when Reich was nominated for the Clinton cabinet. Kaus exposed Reich as an intellectual poseur, an economist wannabe (he was a Yale lawyer who took a Rhodes trip to Oxford), a man who fabricated facts for his many tomes, and one who would—even after being informed that some piece of analysis was faulty, some bit of evidence untrue—continue to dispense policy nonsense so long as it could be slicked up with a new coat of spin.

I recall thinking then, "Wow, this will destroy Robert Reich." Well, not exactly. Indeed, its apparent impact was to convince our president that he had made the perfect pick to advance his administration's agenda.

Reich's cavalier disregard for the facts continues to find eager buyers. He returns to Boston, where a generous sinecure awaits him at Brandeis University. One can only imagine the lecture fee lucre his padded résumé will now produce. And the best-seller list awaits more of Reich's public policy wisdom.

Reich knows his market, and his market is not, as they say in TV, reality-based. As he says, he is not an "investigative journalist," and the true facts will not be expected. Indeed, until Jonathan Rauch came along, Reich's memoir was being reviewed with every presumption of truth afforded the writings of a gentleman and a scholar.

Consider the verdict of *Newsweek*'s Evan Thomas, writing in *The New York Times*: "*Locked in the Cabinet* is delightful. Mr. Reich...is a clever and observant diarist....Despite his feistiness, Mr. Reich has a kind of enduring vulnerability....Mr. Reich is so genuine...that readers will be moved. In truth, Robert B. Reich never really belonged in the upper reaches of the Clinton Administration; he is too ingenuous."

In truth, Robert B. Reich is a relatively honest policy broker in Washington. Calibrate accordingly.

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu) teaches economics and public policy at the University of California at Davis.

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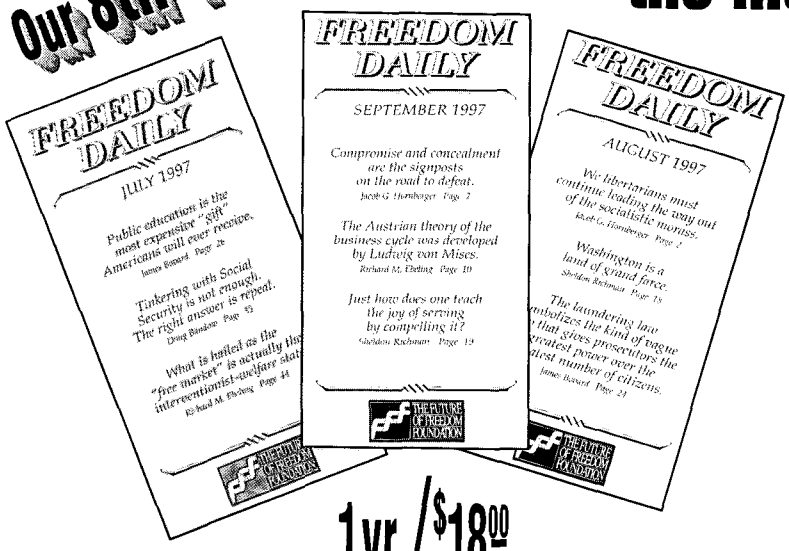
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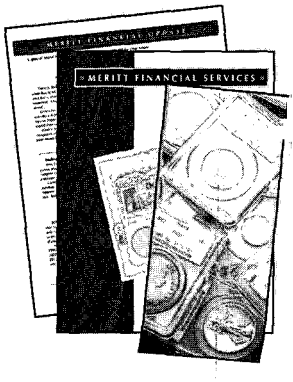

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